Value Capture Mechanisms

International models and their relevance to New Zealand

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SGS
Economics & Planning

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1 Introduction

1.1 The Brief

The New Zealand Ministry for the Environment commissioned SGS to undertake a review of value capture mechanisms as applied in Australia and other jurisdictions with comparable planning systems to that in NZ. Based on this exploration of current practices abroad, the research was to make findings and recommendations about value capture strategies that might be appropriate in a NZ context. These findings and recommendations were to take into account that different implementation issues and policy challenges will arise when applying value capture to projects of local, regional and national significance.

The commissioning of this report reflects the Ministry for the Environment's continuing interest in improving the capacity of all spheres of governance in NZ to effect "transformational" urban change in line with adopted regional and local plans, and national priorities. Such transformational projects may include housing and business intensification in targeted activity centres, the creation of major urban nodes around new public transport infrastructure and the development of nationally significant precincts, such as the Auckland docklands. Projects of this type have the potential to lift land values dramatically, by virtue of the focussed public sector planning effort and investment in infrastructure.

Ideally, part of this uplift in value would be captured by the community for reinvestment in local community facilities and services. Moreover, these transformational projects may be critical to the achievement of urban forms which can offer cities, regions and the whole country an important competitive advantage with tangible economic returns[1]. Hence, any measure that can secure the delivery of these projects will be of strategic significance.

Land value uplift also occurs more generally throughout the community as a result of routine urban management and planning processes. Again, it would be advantageous for part of this uplift to be redirected back into local infrastructure provision.

1.2 Structure of the Report

Our report is structured around 5 questions/themes as follows.

What is value capture?
This Section (2) appraises the drivers of land value increments attaching to changes in planning status. This includes discussion on such issues as the role of 'development licences' and the impact of social (taxpayer funded) infrastructure on land values.

[1] See SGS (2006) Competitive cities – the Role of Urban Design, prepared for MFE Urban Design Champions Seminar Series

Distinguishing value capture from other forms of revenue raising via the planning system.

This Section (3) details how value capture differs from infrastructure charges, impact mitigation payments, inclusionary zoning provisions and development taxes. It also discusses how rules of 'fairness' and cost apportionment vary across these different forms of 'development contribution'.

How is value capture practiced in Australia?

This discussion (Section 4) is organised around the three spatial frames referred to in the brief; State/National, regional and local. It describes the range of value capture mechanisms applied at each level, illustrated with short case studies wherever possible. For each mechanism within each spatial frame in turn, we highlight implementation processes, risks and revenue generating impact.

How is value capture practiced in other relevant jurisidictions?

The focus in this Section is on UK practice. It covers similar territory to the discussion on Australian mechanisms.

Options and implementation in NZ.

In Section 6, we identify preferred approaches in NZ at the local, regional and national levels. The capacity to operate within already established legislative and institutional arrangements was considered in framing these recommendations.

2 What is Value Capture?

Value or 'betterment' capture refers to a taxation, regulatory, partnership agreement or other public policy initiative designed to reserve, for community use, part of the uplift in land value which is created when the scope or intensity of development permissible or achievable on a site is increased by a development approval and/or infrastructure authority. Unlike other forms of "development contribution" (see Section 3), the rationale for value capture payments has nothing to do with charges for beneficial infrastructure, or with compensating for the unanticipated adverse effects of development. It relates to the fact that the uplift in value is conferred by the wider community as opposed to being generated by the efforts of the development proponent or land holder per se. In this sense, the uplift in value is "unearned".

In part, the community creates this value by continuing to subsidise certain items of infrastructure which will service the area, like schools, police services and health facilities. The benefit offered by these community funded, as opposed to user funded, services will be capitalised into property prices. Other things equal, properties favoured with these services will be more valuable than those that are not. This is, perhaps, most apparent when considering the value of non-urban land versus urban land, but it is also evident within urban areas to the extent that the benefits generated by community funded infrastructure are subject to distance decay. Land value uplift is certainly evident when public agencies intervene in an established urban area to provide a significant improvement in transport or other amenity funded from a broad tax pool. A good example of this is the betterment generated from major investments in rail infrastructure (metros, new stations etc).

As well as through its investments in infrastructure, the community creates part of the land value uplift through its collective 'design' and regulation of city growth and change, particularly in its determination that higher order uses shall not occur on a laissez faire basis but in a rationed and systematic way so as to maximise the overall social efficiency of urban development. In some respects, this publicly sanctioned rationing of 'development rights' is analogous to the rationing of water extraction, fishing, forestry and other licences, where unfettered economic activity is likely to lead to a net community disbenefit because of market failures. Although retail, commercial, industrial and hospitality uses might come to mind when considering the 'higher order uses' subject to such licensing, they can be as simple as an approval to use residential land in a more intense way than what is standard or 'as of right' for the area in question, for example, by constructing flats or apartments. By constraining the supply points and supply volumes for these higher order uses, collective action creates the potential for monopoly rents (higher land values for sites with rights to be these supply points). Advocates of betterment levies argue that at least part of this unearned increment should flow back to the community for re-investment to the public good including, perhaps, the improvement of local infrastructure.

Allied to this idea of value creation by the community is the mitigation of unproductive speculation. If the rights to the monopoly rents created by planning intervention are not retained by the community and then 'sold' as appropriate to bona fide developers of the higher order uses, a futures market would develop around anticipated re-designations of land from lower to higher order uses for the sake of capitalising the monopoly rent, rather than realising the higher order

uses in question. This introduces another source of uncertainty in the land market and slows down market adjustment as speculators withhold land in pursuit of even higher monopoly rents as a city grows.

The idea of betterment capture was an integral part of early town planning legislation in Australia and the UK. More recently, formal betterment capture provisions have given way to negotiated arrangements for securing 'planning gain' for the community. The ACT is the only Australian jurisdiction to retain a formal betterment charge, facilitated by its unique leasehold land system. However, various Australian jurisdictions are examining hybrid development contribution arrangements which embody an element of betterment capture (see Section 4). Meanwhile, the UK is moving back towards a more transparent, tax based approach in lieu of the negotiation driven process which had dominated betterment capture practice in that country over the past couple of decades.

In discussing the policy basis for value capture, a key proposition is that a 'development right' has a value in its own right and this value is conceptually distinct from the attributes of the particular piece of land which might host this right. In theory, 'development rights' can be auctioned off separately, that is, without reference to any specific piece of land. Indeed, this occurs in some overseas jurisdictions which feature 'transferable development rights', and in some Australian jurisdictions albeit in a more restricted way. For example, the Victorian Government's Docklands Authority sold development rights separately to land, with title passing over only upon completion of projects or stages.

In this context, betterment levies are akin to the Government's sale of licences to access other rent generating activities which are rationed for the sake of overall community well being and market efficiency, for example, as noted, radio frequency licences, TV broadcaster licences etc. An important observation here is that the licence has a market value independent from the circumstances or intentions of the bidders / purchasers. The equilibrium market value of the licence is determined by the present value of future earnings from operating the licence minus the costs, assuming a reasonably efficient operator. It is not determined by the capacity to pay of operators encumbered by various inefficiencies.

Thus, betterment reflects two factors:

- The provision of taxpayer funded (as opposed to user funded) infrastructure to land;
- The provision of a development right which is otherwise rationed for the sake of efficient urban development.

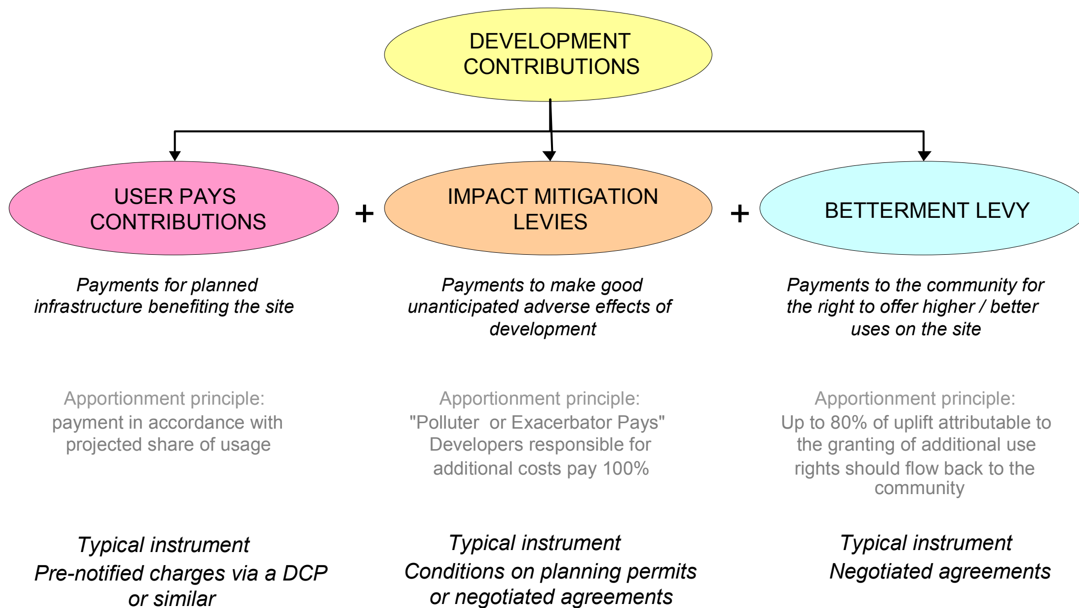
Much of the recent commentary on betterment in Australia relates only to the first of these categories, even though it is arguably the junior partner in boosting land value upon rezoning.

3 Value Capture versus other Forms of Revenue Raising via the Planning System

At a conceptual level it is important to distinguish between betterment capture devices and other forms of development contribution. This is of more than academic significance as the principles governing the fairness and applicability of any given type of contribution can vary considerably, with major implications for how such levies should be implemented via a planning and institutional framework such as New Zealand's.

There are essentially three types of development contribution; user pays charges; impact mitigation levies and betterment levies (Figure 1). The rationale for these and the principles governing good practice in their application are discussed below.

Figure 1 Overview of Development Contribution Types



DCP = Development Contributions Plan

In addition to these three contribution types, development proponents may sometimes be required to make cash in lieu payments for 'Inclusionary Zoning (IZ)' provisions. IZ may apply to any development standard necessary for the preservation or creation of particular environmental values in an area. For example, proponents may be required to incorporate a certain amount of car parking in their project or pay the Council the cash equivalent for this parking to be provided elsewhere in the neighbourhood, otherwise the environment of the precinct in terms of accessibility may be unduly compromised. Similarly, developers may be required to incorporate a given number of affordable housing units in their projects or pay cash for these units to be provided

elsewhere. This is justified on the basis that maintenance of social mix is an environmental value recognised in most contemporary planning statutes.

Development Contributions as User Charges

These are payments required of developers to help fund *planned* infrastructure which will be used by the development in question. Whilst apportionment rules vary at the margin, the essential principle is that developers should contribute according to their projected share of beneficial usage of the items in question.

In several Australian jurisdictions, including Queensland, NSW and Victoria, approval authorities wishing to levy such Infrastructure Charges are required to prepare a Contributions Plan ahead of any exaction. The Contributions Plan must identify the area subject to the charges, the works that will be charged for and the amount that will be charged per dwelling or equivalent demand unit. As these contributions are calculated according to the user pays principle, that proportion of the usage of the planned infrastructure works which will be generated by pre-existing development is netted off the aggregate cost to be recovered from future new development. This is known as the 'discount for existing development'. Discounts may also be made for 'external usage', that is, usage of the infrastructure generated by development which has or will occur outside the Contributions Plan area, or outside the catchments of the infrastructure items in question.

Other Australian jurisdictions apply similar 'user pays' based approaches, but without a formal contributions plan. Instead, the relevant authorities may have a schedule of works (published or unpublished) which is used to guide negotiations with development proponents on case by case contributions. Should negotiations break down and wind up in court, similar cost apportionment principles to those applied in more formal Contributions Plans are generally invoked to resolve the dispute.

In New Zealand, prior to 2002, such charges were only available to Territorial Authorities as 'financial contributions' under s108(9) of the Resource Management Act 1991 (RMA). The Local Government Act 2002 (LGA) now provides for 'development contributions' to be levied by Territorial Authorities.

Under the LGA 2002, development contributions may be required in relation to developments -
'if the effect of the developments is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide appropriately for—
(a) reserves:
(b) network infrastructure:
(c) community infrastructure.' (s199(1) LGA 2002).

Since 2002, most Territorial Authorities in New Zealand have implemented development contributions under their Long Term Council Community Plan (LTCCP).

It is noteworthy that the LGA 2002 provisions appear to conflate the concepts of 'user charges' and 'impact mitigation payments', leading to some confusion as to what cost apportionment principles

might be applicable in particular situations. This lack of clarity became evident earlier this year in a High Court review of a development contribution plan adopted by the North Shore Council[2].

Development Contributions as Impact Fees

Whereas user charges for infrastructure apply to *planned* infrastructure, impact fees may apply when a development creates *unanticipated* or *unplanned* demands on local infrastructure by virtue of its particular design or timing. For example, a large housing estate development in a greenfield location may be required to make a routine 'user pays' contribution of $1,500 per dwelling for the planned upgrading of drainage in the area. However, because of the particular approach to landscaping or site coverage, the project may generate significantly more run-off than a typical development of this size, necessitating the installation of an additional retarding facility off-site. The cost of incorporating this facility into the drainage network could be fully recovered from the development proponent on top of their regular drainage contribution. Another example relates to out of sequence development, where the proponent may be called upon to compensate public transport, roading, health, education and other infrastructure agencies for the cost of accelerating services to the site in question, while maintaining services in "in-sequence" development areas.

The ruling principle for cost apportionment with impact fees is not 'pay according to share of use' (the drainage retarding facility and the accelerated infrastructure items in the above examples may be 'used' by developments across wider catchments). Rather, it is the 'polluter or exacerbator pays' principle, that is, those who cause the cost impact are 100% responsible for mitigating that cost. This would apply even if the unplanned additional investments in local infrastructure subsequently provide opportunities / benefits for other developments.

Unlike user charges, impact fees for infill, brown field and other sites cannot, by definition, be pre-notified. They must be worked out on a case by case basis.

Compensating for the adverse impacts of development, either by modifying project design, or by making cash payments to accelerate infrastructure or fund off-site mitigating works, is an integral facet of the RMA.

Betterment Levies

As discussed, betterment levies can be thought of as development 'licence fees'. They serve a different function to infrastructure charges and impact mitigation payments and may be applied in additive fashion to these two other forms of development contribution.

Resolving a cost 'apportionment principle' relevant to betterment capture requires resolution of a tension between equity (namely, the right of the community to reclaim all the value it has added to a given piece of land through subsidised infrastructure provision and development regulation) and the need to allow some betterment to be privately captured so as to retain a positive incentive for development. As discussed in the next section, this tension is often resolved in an Australian context through negotiation. However, legislation has occasionally been used to fix the proportion

[2] New Zealand Herald, March 26, 2007

of land value uplift that is to be given up by the development proponent or land holder. In the ACT, it is 75%.

4 How is Value Capture Practiced in Australia?

4.1 National

Under the Australian constitution, the Commonwealth Government has no direct jurisdiction over planning and urban management matters. These are generally regarded to be the exclusive province of the States, though the Commonwealth can exert significant influence in these issues via its corporations powers and fiscal muscle.

Leaving aside the ACT, which is constituted under Commonwealth statute, the Australian Government has no land value capture powers as such[3]. However, all Commonwealth land is exempt from State based planning rules and development approval regimes. The Australian Government has extensive land holdings given its historic and continuing constitutional roles in defence, aviation and international trade, and its operational requirements for distribution of social security services ('Centrelink'). When such sites become surplus to requirements, the Commonwealth may dispose of the land with development parameters that optimise the asset's value for the Australian Government. At its own discretion the Commonwealth may consult with the States on such development parameters but is under no statutory obligation to do so. Even land which is used for Commonwealth government business enterprises which have been partially privatised (e.g. Telstra) can be disposed of with development approvals which are not necessarily consistent with local planning requirements.

These arrangements have caused some consternation amongst the States and Territories, particularly when key sites have been 'released' by the Commonwealth for major developments that can profoundly alter the pattern of urban settlement or activity centres. This has occurred, for example, with the creation of large scale retail and commercial centres on Commonwealth Government controlled airport land.

In these circumstances the Commonwealth captures all of the uplift in land value associated with the self awarded additional development rights. There is no obligation to transfer any of these funds, realised usually through lease agreements, to the local Council or State / Territory Government for the provision of infrastructure or other urban services.

[3] The Commonwealth operates a Capital Gains Tax, but this has generic application as a wealth tax, rather than being targeted at value generated by development approvals.

4.2 State

4.2.1 Mechanisms

State Governments may capture betterment through:

- Land Tax legislation;
- development corporations and land banking; and
- special betterment capture legislation.

In addition, State Governments can use the planning system to gain a share of land value uplift. This is an opportunity it shares with local government.

Local government does not have separate constitutional recognition in Australia. This sphere of government operates, in effect, under franchise from the State or Territory Government in question. In most jurisdictions, planning schemes are made under State legislation and remain statutes of the State. To the extent that local matters are involved (which covers most matters), administration of the planning scheme is delegated to local government. In a sense, planning schemes are 'owned' by the local Councils. They typically initiate all strategic reviews and planning scheme amendments. But ultimately, all amendments must be ratified by the State Planning Minister and, usually, by Parliament, albeit in a routine way.

Thus, opportunities and mechanisms for land value capture under the land use planning systems operating in Australia are generally available to both the State and local spheres of government. We discuss these planning mechanisms below under the 'local government' heading.

Land Tax

In some jurisdictions additional or new Land Taxes are applied when a property changes hands as part of a development process. For example, in Victoria, property which is used as a principal place of residence or for primary production is generally exempt from Land Tax. Until recently, any such properties which were sold to a developer or which were rezoned, occasioning a loss of exemption, were subject to a special 5% Land Tax (s.10 (1) of the Land Tax Act).

These arrangements can prove administratively cumbersome, especially given the modest revenue flows at stake. The recent Victorian Budget (May 2007) abolished the 5% Land Tax surcharge for these reasons.

More broadly, it should be recognised that State Land Taxes (and indeed, municipal rates) can be deemed to *partially* tax property value increments on an annual or periodic basis, i.e. through the levying of assessments on graduating scales (on selected land uses). However, in previous

discussions with State Government Treasury officials, SGS concluded that more effective[4] and systematic capture of betterment linked with one off uplifts in land value associated with the actions of the public sector (e.g. rezoning, commitment to social infrastructure) would most likely require legislative change.

Development Corporations

All States either have one or more development corporations in operation or retain the option of setting these up to tackle particular urban regeneration or growth management challenges. In some cases, most notably SA, development corporations have been used to bank large areas of future urban land, using one-off special purpose funds from the Commonwealth[5]. The subsequent release and development of this land has enabled the State Governments in question to capture all of the value uplift created in the process.

Development corporations can also be used to capture *some* value uplift in urban regeneration and in situations where efficient outward urban growth is frustrated by land fragmentation. Again, the legislation in Victoria provides a useful case study of this approach.

Under the terms of the VicUrban Act (the enabling legislation for the State Government's principal urban development agency), land in a regeneration area or land subject to rezoning in a growth area scenario can be incorporated into a *'Declared Project'*. Such declaration can apply to several parcels of land simultaneously, so long as the Minister has regard to the mission of VicUrban and secures the prior agreement of the Treasurer.

Declaration, is supposed to *'lock in'* the price of the land based on the planning and infrastructure conditions applicable at the time of such declaration, that is, prior to rezoning and incorporation into the relevant regeneration or growth area plan. VicUrban may enter into open market negotiations to purchase the parcels in question, but it may also resort to compulsory acquisition. In the latter case, the Act specifies that any uplift in land value due to involvement by VicUrban including, presumably, the sponsorship of the necessary planning scheme amendments to incorporate the land into the 'developable' tracts within the regeneration or growth area, will not be available to the land seller. Section 42 (3) states…

> *In determining the amount of compensation to be paid for the compulsory acquisition of land by the Authority, no allowance is to be made for the enhancement of the value of the land attributable to any action of the Authority.*

Thus, VicUrban could purchase land parcels within the 'declared project', undertake the required development planning and scheme amendment processes, and then re-sell the land in question to bona fide developers or investors. The difference in VicUrban's purchase and sale price for this land, minus VicUrban's expenses in undertaking the transactions, would be the rezoning and infrastructure induced betterment margin that would be transferred to Government.

[4] In terms of proportion of value uplift.

[5] This relates to a short lived program initiated by the Whitlam Government in the mid 1970's. The State Governments were offered large special grants to buy up future urban land in order to exert downward pressure on land and housing prices.

In South Australia, the Land Management Corporation (LMC), the State-owned land banker and developer, can be used to purchase land within Adelaide's Urban Containment Boundary (UCB), or land which is about to be moved within it should it be extended, prior to it being up zoned. This then captures the capital gain for the public sector. As noted, in the early 1970s, the then South Australian Urban Land Corporation bought up most of the land within the current UCB, thereby capturing most of the planning gain within metropolitan growth areas. This has negated much of the need for other betterment capture mechanisms in that State.

Other examples of the use of development corporations to secure land value increments include:

- Western Australia: The East Perth Redevelopment Authority. This is a corporation established under special purpose legislation. It has the power to compulsorily acquire, re-plan and then dispose of land, thereby capturing all of the 'planning gain'.
- NSW: Sydney Harbour Foreshore Authority. This is another special purpose corporation. It has management, planning and development authority over the 'Rocks' and East Darling Harbour areas in Sydney, as well as several other inner city redevelopment sites.
- Queensland Co-ordinator General's Department. The Co-ordinator General is empowered to establish business enterprises to acquire and develop land. This can result in value capture for the State Government. These powers have mostly been used to facilitate port and heavy industry development in the State.

Betterment Capture Legislation

NSW

The NSW Local Government (Town and Country Planning) Amendment Act 1945 incorporated an explicit betterment capture clause. This permitted the taxing of up to 80% of the increase in land value arising from the adoption of town planning schemes. However its provisions were never enforced.

From 1970 to 1973, the Land Development Contribution Act 1970 and Land Development Contribution Management Act 1970 imposed a betterment levy upon specified rural lands within the Sydney Metropolitan Region. Fensham and Gleeson (2003)[6] have documented its operation as follows:

- 'The levy applied at the rate of 30 per cent of the increase in the unimproved capital value of the land between 1 August 1969 and the value at the date of rezoning (as adjudged by the NSW Valuer-General and adjusted for inflation).
- The levy was payable by the landowner at the time the land was sold or when given planning permission to develop. When the land was sold before rezoning the landowner paid the levy on the increase in value indicated by the sale price, with the new owner liable to pay on any further increase in value to the date the land was rezoned.

[6] Fensham, P & Gleeson, B. (2003) Capturing Value for Urban Management: A New Agenda for Betterment, Urban Policy and Research, V21, No1, pp93-112

- The tax collected was only to provide for public works and services in the specified areas and was not for general taxation.'

The tax was abandoned due to political pressure. But it has been argued that it was simple to administer, offered significant revenues at a reasonable collection rate and was directly linked to future infrastructure provision. It did have its faults too. In a sellers market it raised prices for purchasers and the funds raised were insufficient for public works as required. It only applied to land at the time of first rezoning, so owners could try to obtain a modest initial rezoning and thus sidestep the later, more significant rise in value.

ACT

Betterment capture is currently only applied via explicit legislation within the ACT, even though it has been on the statute book in Victoria, Western Australia and, as noted, NSW. The ACT maintains a Territory wide leasehold land tenure system. This, in tandem with the Territory's well established legal framework for public sector led land management, explains the ACT Governments willingness to levy betterment in a more wholehearted fashion, via Change in Use Charges (CUCs).

The ACT Land (Planning and Environment) Act of 1991 states that if leases are varied in a manner that increases the value of the use and development rights attaching to the site, a charge is payable to give back some of the increased value to the community. The value of the lease is assessed both prior to and after the variation, and if there is an added value from the variation, 75 per cent of this is typically recovered via a Change of Use Charge.

4.2.2 Risks, Failures and False Starts

A review of the Australian (States) approach to value capture reveals a range of risks and implementation difficulties.

A recent example relates to the adjustment of the Urban Growth Boundary for metropolitan Melbourne. The Victorian Government correctly identified that the addition of more land to the urban footprint would, in effect, release an additional stock of 'development licences', though this term was not used as such. In policy statements, the Government had in mind a gradation of 'development contributions for State infrastructure' when greenfield land was converted into new housing estates, utilising legislation enabling development contributions already embedded in the Planning & Environment Act. That is, land added to the footprint would be subject to a heavier development contribution burden compared to projects in areas already included within the boundary. The clear objective was to claw back some betterment added to the new land. However, the Government soon found itself caught by its own 'fair apportionment' rules for infrastructure charges, and was unable to proceed with the differentiated contributions. The betterment capture strategy was effectively abandoned. This highlights the urgent need to maintain conceptual clarity in the design of any betterment capture strategy. Confusing the various elements indicated in Figure 1, on page 5 is usually a recipe for opaque and difficult to defend policy.

The NSW government considered value capture to finance the New Southern Rail Line (airport rail link) and the Parramatta Rail Link (now the Epping to Chatswood rail line) but this approach was

not proceeded with in favour of general revenue gain through an increased local rate base and State property taxes (including stamp duty) driven by improved economic and employment performance[7]. The difficulties here related to questions of selective taxation to pay for infrastructure which, in the past, was largely funded by the wider community. Again, these issues might have been better managed by more clearly distinguishing betterment capture as a charge for a development right, as opposed to a tax on land value increment per se.

4.3 Local

Mechanisms operated via the Planning System

NSW

In its recently released metropolitan strategy, the NSW Government has foreshadowed a move to capture part of the value uplift from the early provision of taxpayer funded infrastructure. In the "Implementation and Governance Chapter" there is a section on funding, pricing and project delivery which mentions:

> *'where practical, (the Government and its partners will) design funding instruments which efficiently and fairly capture a component of private value uplift resulting from Government land use and infrastructure investment decisions'*[8]

This appears to combine notions of betterment with user-pays charges for infrastructure. However, the timing of the levy is the key. If it can be charged early enough, the impact upon the value of land from the proposed infrastructure may be captured, which is a form of betterment levy. Reportedly, there is potential for something of a struggle within the NSW Government about the best way to approach value capture. Central agencies may be drawn to the idea of a separate betterment levy. On the other hand, line agencies may be more inclined to favour a levy which is embedded in the planning system and which is wholly hypothecated to infrastructure provision. Line agencies tend to argue that by tying the levy to infrastructure, but as a tariff on increased value as well as a user charge, it is likely to be more politically acceptable as there is a visible end benefit to the development proponents.

Greenfield sites nominated within the Sydney Metropolitan Strategy will be structure planned to identify infrastructure needs. This will occur in parallel with designating redevelopment potential and rezoning proposals which will also give rise to a land value uplift. A betterment levy could be applied via the powers under Part 3A of the Environmental Planning and Assessment Act, under which the Minister can impose State infrastructure levies and cap Section 94 – local government infrastructure – levies.

[7] Brought to SGS's attention by the ARC, upon its review of an earlier draft of this report.

[8] NSW Government's metropolitan strategy, 2005, p271

In addition, NSW applies an informal betterment capture mechanism through '*Satisfactory Agreement Clauses*', which are negotiated during the rezoning process. These provisions are often applied with Floor Space Ratio bonuses. In Wollongong, this approach was recently used to capture three percent of construction value. However, it is unclear whether this was a betterment clause or how it was calculated. It appears that in return for this payment, special dispensation was given with regard to height limits and extra floorspace. This informal mechanism raises transparency issues as the governance arrangements are weak and it is unclear who manages the revenue - local or State Government. It is for such reasons that central agencies may be less supportive of these special arrangements organised through the planning approval system.

Queensland

In Queensland, there are no formal betterment capture mechanisms in place at present. However the South East Queensland Regional Plan 2005 – 2026, the State's first statutory regional plan, has introduced a new development contribution vehicle which can be used, in part, to capture land value increases attributable to rezoning. *State Infrastructure Agreements (SIAs)* will be applied to major new development areas within the region. These include both greenfield and redevelopment sites.

The mechanics of SIAs are still being refined. However, the general approach is similar to that which is being considered in New South Wales: '*In some instances, expenditure on infrastructure will be used to lead development in order to achieve specific outcomes. This will provide clear benefits to some sections of the community. In these instances, the Queensland Government considers it reasonable for beneficiaries to bear some of the cost of this infrastructure provision*'.[9] SIAs will be assessed on a flexible, case-by-case basis. This suggests that a part of the SIA will be a betterment levy to capture some of the potential increase in value from the early provision of infrastructure.

Victoria

Unlike its predecessor (the Victoria Town and Community Planning Act 1967, which had an explicit betterment capture clause) the current Victoria Planning and Environment Act 1987 is silent on this issue. However, it appears to leave the door open to land value capture via the planning scheme amendment process.

Section 6 sets out what a planning scheme can provide for:

> **"6. What can a planning scheme provide for?**
>
> (1) A planning scheme for an area—
>
> (a) must seek to further the objectives of planning in Victoria within the area covered by the scheme; and
>
> (aa) must contain a municipal strategic statement, if the scheme applies to the whole or part of a municipal district3; and
>
> (b) may make any provision which relates to the use, development, protection or conservation of any land in the area.

[9] South East Queensland Regional Plan 2005 – 2026, 2005, p79

(2) Without limiting sub-section (1), a planning scheme may—

…..

(h) require specified things to be done to the satisfaction of the responsible authority a Minister, public authority, municipal council or referral authority;

…..

(k) provide that any use or development of land is conditional on an agreement being entered into with the responsible authority or a referral authority;

Sub-section (2) (h) appears to be all encompassing; any "specified things to be done" could be read to include the payment of betterment.

Sub-section (2) (k) states that use or development is conditional on an agreement being entered into. An agreement is just that, an agreement between two or more parties, and it could include a betterment levy. But obviously it is dependent on agreement and thus may not be able to be applied in all cases. Therefore it would not necessarily capture betterment on an equitable basis. The danger of this method is transparency – parties to such agreement may wish to maintain commercial confidentiality. It could also be argued that it is nothing more than a coercive fee for rezoning, which could mean some rezonings are only available to those that can afford to pay.

Notwithstanding these observations, the Planning and Environment Act *has* been used to capture part of the increase in land value contingent upon up-zoning. One oft-quoted example relates to 1996, when the Parliament approved an amendment to the Manningham Planning Scheme to facilitate ongoing development of Westfield Shoppingtown in Doncaster, a suburb some 15 km east of central Melbourne. This included a significant expansion in retail floorspace, generating a sizeable uplift in land value. The relevant planning scheme schedule relating to this amendment obliges the development proponents to pay a significant sum to the local council for loosely specified off-site works (see extract from the Manningham Planning Scheme below).

MANNINGHAM PLANNING SCHEME

LOCAL PROVISION

SCHEDULE 1 TO THE INCORPORATED PLAN OVERLAY

Shown on the planning scheme map as **IPO1**

WESTFIELD SHOPPINGTOWN DONCASTER CONCEPT PLAN, SEPTEMBER 1996

1.0 Permits not generally in accordance with incorporated plan

A permit may be granted which is not generally in accordance with the incorporated plan.

2.0 Conditions and requirements for permits

A permit must include the following conditions, as appropriate to the application:

Legal agreement

- No building or works may be commenced on the land until an agreement has been entered into between the owner of the land and the responsible authority under Section 173 of the Planning and Environment Act 1987. The agreement must include:
  - The provision or payment by the owner for the necessary roadworks on local roads as directed by the responsible authority in consultation with the owner.
  - The provision or payment by the owner for the necessary roadworks including any traffic control items on roads declared under the Transport Act 1983 as required by the Roads Corporation in consultation with the owner.
  - The provision or payment by the owner for the necessary infrastructure to support the development, including the establishment of landscaping and street trees in nearby streets.
  - A commitment by the owner to contribute to the investigation of opportunities for the provision of child minding or day care facilities in or nearby the shopping centre.
  - The provision or payment by the owner for the relocation of the existing library within the shopping centre or, if so directed by the Manningham City Council, payment by the owner to the Council to the value of such relocation to be applied to establishing a library elsewhere.
  - In addition to the above, a financial contribution by the owner to the Manningham City Council equivalent to the net present value of $4.6 million as at 10 April 1995 to be applied to the improvement of library, cultural, information technology and youth facilities on or in the vicinity of the development.
  - Details of the timing of any contribution.

More generally, local Councils in Victoria (and other States for that matter) use the rezoning process to negotiate a range of community benefits from proponents. Implicitly, this is recognised by all parties as an exercise in sharing the betterment arising from the scheme amendment, but there are no rules or guidelines to discipline the process. It can lead to protracted delays in the warranted amendment of planning rules, which can be damaging to land release and market efficiency generally.

Other Mechanisms at the Local Level

Most Local Government Acts across Australia establish the power to levy a variety of rates and charges. The most relevant rates and charges to betterment capture are 'differential rates' and 'special rates and charges'. The Victorian legislation amply illustrate these potential mechanisms.

Differential rates

Under s.161(1)of the Victoria Local Government Act….

> *"A Council may raise any general rates by the application of a differential rate if –*
>
> *(a) it uses the capital improved value system of valuing land; and*
>
> *(b) it considers that the differential rate will contribute to the equitable and efficient carrying out of its functions."*

The key question in relation to this mechanism is whether the funding sourced by betterment capture via such a rate could be considered to be for the purpose of '*Council functions.'* On the face of it, the answer is 'yes'. Section 3E(1) includes the following as functions of a Council, amongst others:

(b) planning for and providing services and facilities for the local community; and

(c) providing and maintaining community infrastructure in the municipal district.

In theory then, the imposition of Differential Rates as a means of capturing all or part of the uplift in land value contingent upon the supply of subsidised infrastructure and services to the land in question and/or the granting of a 'development licence', as opposed to a user charge for 'private benefit infrastructure', cannot be ruled out. However, few Councils have gone down this route. This is partly because differential rates are pegged to a certain proportion of the lowest or highest rate applying in a local government area. This seriously limits the amount of betterment captured.

Special rates

s.163(1) of the Victorian Act enables Councils to levy 'special' rates or charges in relation to carrying out their functions, if the performance of such conveys a "…special benefit to the persons required to pay…". Again the issue of confinement to 'Council functions' arises.

The levying of a special rate or charge is designed to be directly linked with specific projects. That is, while s.163(1)(a) stipulates that the funds from a special rate can be used for "…any purpose for which the rate was made…", s.163(3)(a)-(d) requires Council to declare the land areas applicable, the Council function being performed, the total cost of the function, the total amount to be levied, as well as the duration of the rate.

Special Rates in practice may have become a form of user charging rather than betterment capture, as the proponents of such schemes must demonstrate a tight beneficiary nexus between the properties subject to the Special Rate and the infrastructure projects in question.

A special rate or charge can only be declared if the majority of relevant, rateable properties support the proposal.

5 How is Value Capture Practiced in the UK?

5.1 An Historical Snapshot

There have been several attempts to impose development gains taxes, or the like, in the UK.

The 1947 'Development Charge' was the first attempt to tax windfall gains from land development. The charge was levied at 100 per cent of the excess value attributable to the granting of planning permission, relative to the existing use value on the date the development began. However, the effect of the tax was to reduce land coming forward for development, and the revenue raised was substantially lower than expected.

The 1967 Betterment Levy aimed to capture value above 110 per cent of existing use (prior to rezoning) value, so as to provide an incentive to sell by allowing some development gain to be made. The charge was introduced at 40 per cent with the stated intention of raising this proportion. However, among other problems, the complexity of the legislation allowed many developers and landowners to avoid paying by 'establishing' that work had begun prior to the charge's introduction. Again, the measure raised far less money than was initially expected.

The 1973 Development Gains Tax sought to tax income gains accruing from disposals of land possessing development potential, at rates of up to 82 per cent for individuals, and 52 per cent for companies. However, rapidly changing market conditions, and a change of Government to one with different development gain ideas soon after the tax's introduction, meant that this measure had little time to exercise an influence on the land market.

A Development Land Tax was charged on each occasion of the realisation of development gain flowing from disposals of land after August 1976. This tax contained several different features to its predecessors. These included levying the charge not only on actual sales, but also on assumed disposals where development projects began on land without a preceding land sale. There were also numerous exemptions from the tax. However, the complexity of the tax led to a proliferation of avoidance regimes and resulted in the tax falling disproportionately on smaller landowners, leading to allegations of unfairness. This tax was abandoned in 1985.

5.2 Current Practice: UK Planning Agreements

With the abandonment of the Development Land Tax, the focus in betterment capture shifted to development contributions via the use of planning agreements under *Circular 22/83 Planning Gains* and later under *Section 106 of the Town and Country Planning Act 1990*. The change in jargon from *Planning Gain* in the early 1980s to *Planning Agreements* through the inclusion of *Section 106 of the Town and Country Planning Act 1990* legitimised and institutionalised the notion of planning gain. However, it has been noted that despite this welcome clarification, the Act has hardly made any significant difference to everyday practice and the acceptability of the system.

What are Planning Agreements?

A *planning agreement* is a legal mechanism through which a developer agrees either to accept a restriction on the use of the land or the operation of the development or to make contributions to a local authority. Each contribution is termed a *planning obligation*. The legal basis of planning agreements is set out in *Section 106* of the *Town & Country Planning Act 1990*. Specifically, Section 106 (1) states:

> *"…that anyone with an interest in land may enter into a planning obligation enforceable by the local planning authority identified in the instrument creating the obligation. Such an obligation may be created by agreement or by the person with the interest making an undertaking."*

In this sense, an Agreement is a legally binding private contract between a developer and a local planning authority and operates alongside a statutory planning permission. Such agreements require developers to carry out specified obligations when implementing planning permissions and are the result of negotiations on these matters between the two parties. Obligations may be entered into to prescribe the nature of development, to secure a contribution from a developer to compensate for any loss or damage caused by a development, or to mitigate a development's wider impact. Agreements can thus be 'negative' (where they place restrictions on development) or 'positive' (where they oblige developers to do or pay for something). With respect to the latter, obligations can be carried out either by providing what is needed to a standard specified in the agreement or by paying a sum to the planning authority which will then itself provide the facility. As such, planning agreements may act as a development contribution via 'user-pays' contributions and/or 'impact mitigation levies', as well as arrangements for the capture of betterment.

Interestingly, powers to enter into agreements with developers have long existed in UK planning law but their use has grown considerably in scope and scale over the last two decades. Until the 1990s their deployment was largely restricted to contributions for a limited range of 'off site' costs, such as providing access roads to sites, as well as dealing with some of the intricacies of the site development process itself, for example phasing. More recent years have seen a significant growth of planning agreements to secure wider community benefits. This includes asking developers to make contributions to meeting local affordable housing needs. Initially restricted to rural housing, Government policy now enables planning authorities to use planning obligations to secure affordable housing on all but small-scale residential development sites. They can do this either by including affordable housing within the market site or on another site, although the Government's policy to encourage mixed communities favours on-site rather than off-site contributions[10].

[10] Crook, T., et al. (2002) Planning Gain and Affordable Housing: Making it count Joseph Rowntree Foundation.
Monk, S., Whitehead, C., Crook, T., Henneberry, J., Rowley, S., Short, C. and Lister, D. (2005) 'Value for Money of Delivering Affordable Housing through Section 106', ODPM, London

Case Study: Milton Keynes Infrastructure Tariff[11]

Milton Keynes, in South-East England is experiencing considerable urban growth. The Milton Keynes and South Sub-Region Strategy provides for the development of 33,900 new dwellings between 2007 and 2016 in the existing urban area and in two new Major Expansion Areas. The *Milton Keynes Partnership Committee (MKPC)* was set up as the Local Planning Authority (LPA) responsible for major applications within the Urban Development Zone (predominantly made up of the Expansion Areas).

The scale of the growth envisaged at Milton Keynes requires a major investment in local and strategic infrastructure. This will enable the necessary transportation, highways, educational, health and social infrastructure to be provided, in advance of development, so that new growth is sustainable and existing communities are not disadvantaged by growth. The scale of growth also requires a comprehensive approach that "joins up" major planning applications in a seamless way.

In an effort to streamline development contributions, MKPC has introduced an 'Infrastructure Tariff' in place of traditional individual Section 106 agreements. This Tariff is seen as a mechanism for capturing a portion of the uplift in land value derived from granting planning permission within the Expansion in addition to traditional 'user pays' contributions. With approval from Treasury, the MKPK (through English Partnerships – the UK Government's regeneration agency is acting as banker providing advance funding for roads, education, health, community services, parks and attracting inward investment in tandem with new homes.

The developers' Tariff contributions of £18,500 per residential dwelling and £260,000 per hectare of employment space will be pooled and used to reimburse EP in future. This streamlined approach to major development contributions agreements will allow the fast-tracking of development by avoiding the need for individual protracted planning agreements. The tariff will raise 75% of the cost of the required infrastructure and will apply to all developments of 10 dwellings/1Ha or greater. In addition to the Tariff, developers will provide affordable housing in line with Milton Keynes Council's current requirements (30% of the total dwellings with a mix of social rented, mixed tenure and low cost sale), together with free land for schools, open spaces, community facilities and community reserve sites.

5.3 Advantages and Disadvantages of UK Planning Agreements

The UK experience shows that:

- some local authorities have proved far better than others at negotiating realistic contributions without inhibiting development;
- in other cases, however, developers complain of protracted delays and unrealistic expectations; and
- in still other areas, authorities, perhaps stung by such criticisms, have secured far less than might reasonably have been expected in developer contributions.

[11] Source: Milton Keynes Partnership 2007

The extension of practice to meeting wider community needs also means that planning obligations are now more openly performing two different economic roles: as a vehicle for compensating third parties for the negative externalities arising from development and as an informal tax of land betterment[12]. The Barker Review of Housing Supply (2004) recommended that these two roles should be separated.

According to Barker, planning obligations should be scaled back and restricted to dealing with the mitigation of development impact and to agreeing affordable housing contributions. A tax – Planning-gain Supplement (PGS) – would be used to extract some of the windfall gain and the yield returned to local authorities to help them finance the needs currently funded by developers as a result of negotiations over planning agreements. The Government has accepted the Barker recommendations and has recently consulted on the proposed Planning-Gain Supplement[13].

5.4 Future Directions

According to the UK Government's Consultation Paper on PGS, the base for calculating PGS would be the "planning gain" —the difference between the land value with full planning permission (planning value or PV) and the value of the land in its current use as permitted by the planning system (current use value or CUV). The charge would be calculated by applying the PGS rate to the difference between the two values. Payment of the tax would not be required until the development commenced.

With regard to the allocation of the proposed Tax, the central Government has indicated that PGS revenues will be dedicated to financing additional investment in the local and strategic infrastructure necessary to support growth. The Government anticipates that an overwhelming majority of PGS funds will be recycled within the region from which they are generated. In addition to this, a significant proportion of the revenue raised will be used to fund strategic regional, as well as local, infrastructure through a Community Development Fund.

In addition to a PGS Tax, more flexible approaches to planning gain than conventional Section 106 agreements are currently being developed by central and local government. These include the proposed 'roof tax' to fund expansion in the Milton Keynes area: developers may be expected to pay a levy of around £20,000 per new house for building schools, hospitals, roads and other facilities. A similar approach could be adopted in other new-build areas, with a proportion of the fund set aside to provide resources for the delivery of quality public spaces.

[12] Corkindale, J., The Land Use Planning System: Evaluating Options for Reform, Hobart Paper No. 148 (Institute of Economic Affairs: London, 2004)

[13] HM Treasury, HM Revenue and Customs and Office of the Deputy Prime Minister (2005) Planning-gain Supplement: a consultation. London, HM Treasury, December.

6 Options and Implementation in NZ

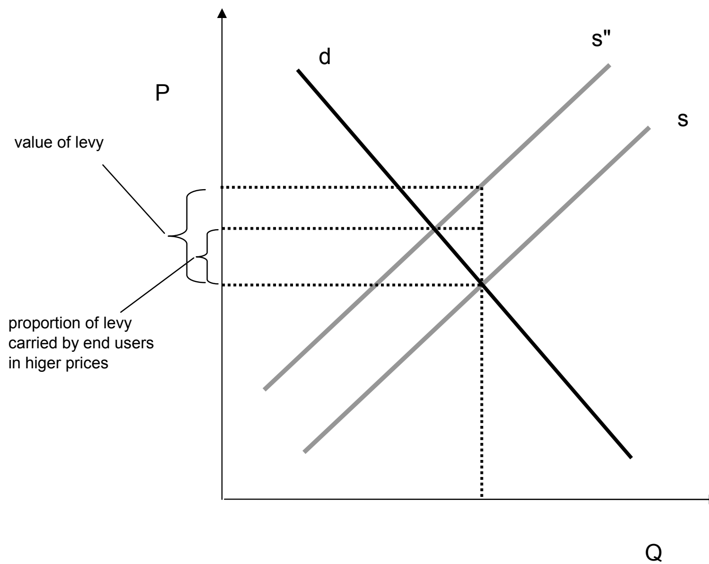
6.1 Overview of Experience in other Jurisdictions

Explicit betterment taxes in Australia and the UK have been difficult to sustain. The early town planning legislation in most Australian States allowed for the capture of value uplift brought about by a change in planning rules/status of land. But such provisions were sporadically used, and were quietly shelved during the second major wave of planning legislation introduced across Australian States from the 1980's.

In this process, the underlying rationale for betterment capture was not necessarily challenged. Indeed, as discussed earlier in this report, the NSW Government briefly revived a direct betterment tax, recognizing that the granting of development rights did, in fact, confer a windfall on the property holder. This tax, together with those value capture mechanisms embedded in early generation planning legislation, appear to have fallen foul of practical difficulties, rather than matters of principle. One difficulty in this regard is the measurement of the betterment margin itself, bearing in mind that market trading often anticipates future re-zonings and their equivalents so that the final act of changing the statutory planning status of a given piece of land is not necessarily accompanied by a windfall in the later rounds of property transactions.

A related difficulty concerns the quarantining of any betterment levy. Any tax linked to the development approval process is likely to operate as a producer levy, with part of the tax being passed forward to end users (as opposed to the developer or the land seller), depending on the elasticities of the supply and demand curves in question. This is illustrated in Figure 2. The imposition of a given tax, indicated on the diagram as "value of levy", will result in a contraction of supply volumes at all price points. In other words, producers will require a higher price, by the margin of the levy, for any given quantity of supply. Thus, the supply curve contracts to the left. This establishes a new market clearing price which is higher than the pre-levy price, but lower than the full value of the levy. The extent to which increases in price approximate the full value of the levy depends on the slopes (elasticities) of the supply and demand curve in question.

Figure 2 Incidence of producer levies



Another factor contributing to the demise of these explicit value capture mechanisms was the concern that any systematic attempt to tax betterment should be complemented by legislation to compensate land holders who might suffer a loss of development entitlements by virtue of a plan change. In theory, this ought not be a stumbling block, as any 'efficient' change of planning rules should create more winners (betterment) than losers (liabilities for compensation). However, the real world situation will often involve up-front obligations to pay compensation, while any betterment receipts may be contingent upon future development applications or property trades. Compensation for down-zoning, or the removal of development rights via changes in planning rules, has therefore become something of a bugbear in the reform of Australian planning legislation, with many experts arguing that any legislation that might impede the free adjustment of development control schemes to achieve sustainable outcomes must be avoided.

Notwithstanding such difficulties, there is continuing recognition in Australia that betterment is created in the planning scheme amendment / development approval process. Whilst the explicit frameworks for value capture may have been withdrawn, planning authorities, and indeed Planning Ministers, continue to factor the value uplift into their deliberations when considering the merits of a development approval. As in recent experience in the UK, this manifests itself in protracted negotiations over these development approvals, to arrive at a fair apportionment of any 'planning gain' that might be generated. There is an economic cost attached to these hidden value capture mechanisms, relating to the additional uncertainty as well as delays attaching to the rezoning and consent process.

In searching for alternatives to negotiated betterment agreements, the experience of the ACT is probably the most useful. This is not to say that NZ should seek to replicate the leasehold tenure system operating in the Territory. Rather, the message from the ACT case study is that there is advantage in separating the concept of paying for development rights or 'development licences', from the planning approval / rezoning process per se.

The ACT system has had its share of problems, in terms of complexity and litigation regarding the estimation of any betterment liability with a change of use. These relate to the vagaries of 'before and after' valuations of the affected land, and to this extent, echo some of the difficulties confronted by the betterment capture mechanisms trialled in NSW during the 1970's. Although not yet resolved, the ACT Government has declared an intention to simplify the betterment estimation system in the Territory. This could involve some form of 'schedulisation' of liabilities to cut out case by case valuation processes (and potential disputes).

A mock up of such schedule is shown in Table 1, below. It involves per unit land values associated with different types and intensities of land use. Thus, for example, the land value component for 1 square metre of commercial floorspace in a low-rise development in 'Suburb One' is typically $200, whereas for a retail use, it is $400. These figures would be generated by annual valuations (or index adjusted valuations) across a district, as occurs for the setting of municipal rates and the like.

Examples of how this codified approach might work, assuming a 75% value capture rate, include:

Example 1 Development approval or rezoning to permit merger of 4 single dwelling sites for the purposes of constructing a 5,000 sq. metre office building in Suburb / District Two.

Betterment Charge =
Value of new development / use rights 5,000 x $250 = $1,250,000
Value of existing development / use rights 4 x $200,000 = $800,000
= $450,000 x 0.75 = **$337,500**

Example 2 Development approval or rezoning to permit the ground floor (1,500 sq m) of a 4,500 sq m office building to be used for retail and hospitality purposes in the Central City.

Betterment Charge =
Value of new development / use rights (1,500 x $650) + (3,000 x $350) = $2,025,000
Value of existing development / use rights 4,500 x $350 = $1,575,000
$450,000 x 0.75 = **$337,500**

Table 1 Notional 'Schedulisation' of Development Related Land Values

Suburb / District One

	Lowest	Modal or Typical	Highest
Residential			
a. Single dwellings - 650 sqm	$ 120,000.00	$ 160,000.00	$ 200,000.00
b. Dual occupancy	$ 140,000.00	$ 180,000.00	$ 220,000.00
c. Medium dwellings (townhouses)	$ 70,000.00	$ 85,000.00	$ 100,000.00
d. High Density multi unit dwellings (apartments)	$ 20,000.00	$ 25,000.00	$ 30,000.00
Commercial (offices)			
a. Low rise (up to 4 storeys) psm GFA	$ 150.00	$ 200.00	$ 250.00
b. High rise - N/A	N/A	N/A	N/A
Retail (including cafes, restaurants and similar services premises)	$ 300.00	$ 400.00	$ 500.00
Other hospitality premises (hotels)	$ 150.00	$ 200.00	$ 250.00
Industrial - Land area	$ 150.00	$ 200.00	$ 250.00

Suburb / District Two

	Lowest	Modal or Typical	Highest
Residential			
a. Single dwellings - 800 sqm	$ 150,000.00	$ 200,000.00	$ 280,000.00
b. Dual occupancy	$ 160,000.00	$ 220,000.00	$ 300,000.00
c. Medium dwellings (townhouses)	$ 80,000.00	$ 100,000.00	$ 120,000.00
d. High Density multi unit dwellings (apartments)	$ 30,000.00	$ 35,000.00	$ 40,000.00
Commercial (offices)			
a. Low rise (up to 4 storeys) psm GFA	$ 200.00	$ 250.00	$ 300.00
b. High rise	$ 175.00	$ 225.00	$ 250.00
Retail (including cafes, restaurants and similar services premises)	$ 400.00	$ 500.00	$ 600.00
Other hospitality premises (hotels)	$ 200.00	$ 250.00	$ 300.00
Industrial	$ 200.00	$ 250.00	$ 300.00

Suburb / District Three (industrial)

	Lowest	Modal or Typical	Highest
Residential			
a. Single dwellings			
b. Medium dwellings			
c. High Density multi unit dwellings			
Commercial (offices)			
a. Low rise (up to 4 storeys)	$ 200.00	$ 275.00	$ 350.00
b. High rise	N/A	N/A	N/A
Retail (including cafes, restaurants and similar services premises)	$ 300.00	$ 350.00	$ 400.00
Other hospitality premises (hotels)	N/A	N/A	N/A
Industrial	$ 175.00	$ 250.00	$ 300.00

Central City

	Lowest	Modal or Typical	Highest
Residential			
a. Single dwellings - 800 sqm	$ 250,000.00	$ 350,000.00	$ 450,000.00
b. Dual occupancy	$ 275,000.00	$ 380,000.00	$ 500,000.00
c. Medium dwellings	$ 120,000.00	$ 160,000.00	$ 200,000.00
d. High Density multi unit dwellings	$ 75,000.00	$ 85,000.00	$ 100,000.00
Commercial (offices)			
a. Low rise (up to 4 storeys)	$ 300.00	$ 350.00	$ 400.00
b. High rise	$ 250.00	$ 275.00	$ 300.00
Retail (including cafes, restaurants and similar services premises)	$ 500.00	$ 650.00	$ 800.00
Other hospitality premises (hotels)	$ 250.00	$ 300.00	$ 350.00
Industrial	N/A	N/A	N/A

6.2 Ways forward for New Zealand

6.2.1 Strategic Directions

Broadly speaking, this review of land value capture experience in Australia and the UK points to three overarching options, or strategic directions, for New Zealand. These include the institution of an explicit betterment tax, either embedded in the planning legislation (e.g. RMA or the Local Government Act) or via specially crafted statute (as with the NSW Land Development Contribution Act 1970). The latter could include various forms of tax increment financing, whereby part of the uplift in land value brought about by major public investment, for example, the construction of a

new rail line or the development of regional parkland, is captured over time through a municipal rate or Land Tax surcharge[14].

A second major grouping of land value capture mechanisms avoid an up-front specification of the value uplift margin and/or tax rate, and instead rely on negotiated agreements between a development proponent and an approval authority. Under these agreements, the proponent is obliged to deliver a range of community benefits on and off site, commensurate with a 'fair sharing' of the planning gain involved. Such community benefits could include upgrades to roads and other physical infrastructure, provision of affordable housing, provision of urban art, operation of various public services like public transport and child care and the reinstatement of environmental assets (forests, wetlands etc).

Finally, land value can be captured by Government acquiring land prior to the awarding or confirmation of development rights. Typically this occurs through the operations of development corporations. These often have the power of compulsory land acquisition. However, this tends to be used as a last resort. In an Australian context at least, development corporations will generally rely on open market negotiations to acquire property, offering prices towards the higher end of the valuation spectrum to induce transfers. Occasionally, development corporations operating in, say, regeneration situations where land holdings are highly fragmented, may offer the targeted land holders a stake in the development project, with the land holders equity fixed in line with a generous estimate of the relevant parcel's market price. This is sometimes referred to as a *'land readjustment strategy'*[15]. In these situations, the extent to which value uplift is shared between the corporation and other stakeholders depends on a range of factors including the timing of payments to stakeholders and the allocation of development risk. In general, much of the uplift in land value is captured by the in-situ land holders rather than the government agency sponsoring the redevelopment/consolidation initiative. This, plus the fact that these schemes can be costly to set up (in administrative time), means that they are not widely used in Australia.

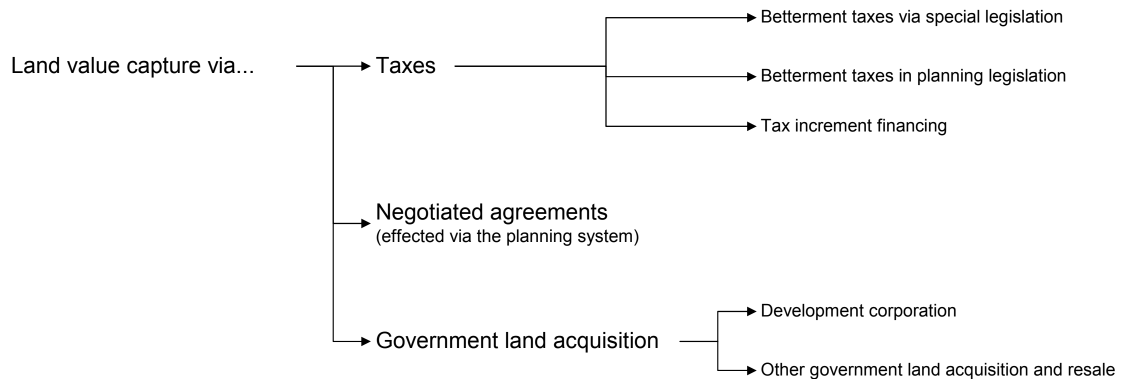
Land value capture may also occur without the aid of development corporations, simply by public agencies buying and disposing of land with different development right endowments, determined, in effect, by government.

The three broad approaches to value capture are summarised in Figure 3.

[14] Tax increment financing is used extensively in the US. See SGS (2006) Catalysing Positive Urban Change in New Zealand, report prepared for Ministry for the Environment

[15] Some commentators in the US have suggested that this principle can be institutionalized so that land holders in a targeted area would be offered the opportunity to vote to join a development vehicle which would undertake the regeneration project and share the proceeds amongst stakeholders. See http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=1229

Figure 3 Three approaches to land value capture



With some exceptions, notably the ACT 'Change of Use' charging arrangements, practice in Australia appears to be moving towards the 'negotiated agreement' approach to value capture. However, in the UK there appears to have been something of a backlash to such strategies on efficiency grounds, with the Government now looking to institute a more transparent and certain tax based framework.

6.2.2 Options for Practice in New Zealand

As noted in Section 1, one objective of this report is to explore options for effective value capture in NZ with specific reference to 'urban transformation' projects. These tend to be localised/place specific, and can involve substantial land value increase as a result of concentrated public sector investment.

The report was also to explore more 'generic' frameworks for the capture of betterment, as per the systems applying in the UK.

We deal with these two contexts in turn, below.

6.2.3 Urban Transformation

The practical options in this context include:

- Establishment of development corporations with full land acquisition and value capture powers;
- Establishment of development corporations with a facilitation/ partnership building mandate; and
- Special legislation enabling place/project specific betterment taxes.

Development Corporations

The powers and operations of such corporations have been fully described in SGS's 2006 report for MFE entitled "Catalysing Positive Urban Change in New Zealand". Such corporations would reflect well established practice in both the UK and Australia, whereby targeted lands are acquired on the open market or by compulsory order, re-planning and infrastructure upgrading occurs and the corporation recovers the uplift in value as the 'reconfigured' land is released back to the market for private sector development.

This is an internationally proven model, but lacks a history of successful implementation in the NZ institutional context.

Facilitation Corporations

Facilitation corporations could be set up under existing legislation (e.g. CCO's). Their role would be to 're-vision' and re-plan the targeted areas, and undertake the relevant negotiations within Council/Government to establish contingent agreements for the delivery of key infrastructure. With these established, the facilitation corporation would seek voluntary partnerships with land holders and prospective developers in these areas with a view to, in effect, sharing the uplift in land value generated by the re-planning and infrastructure investment on offer.

This model is more in keeping with past NZ practice. It has some resonance with Australian models whereby development corporations choose joint ventures ahead of compulsory acquisition (see above). The major drawback with this approach is that there is no mechanism to "make things happen" either on the part of Government partners or recalcitrant land holders in the targeted areas.

Special Value Uplift Taxes

This legislation would enable central, regional and local governments to institute special rates or taxes linked to value uplift or some proxy for this, for example, the size/value of new development as it proceeds in the targeted area. Importantly, such rates or taxes would *not* be linked to direct usage of any new infrastructure underpinning land value increases. This would be the subject of separate user change, if warranted.

As noted, value uplift taxes, or tax increment framing, is a well established tool for regeneration projects in the US. It has also been used from time to time in Australia. One example is the use of a rate surcharge across the City of Melbourne to help pay for the Melbourne Underground Rail Loop in the late 1960's / early 1970's. An infrastructure levy is currently being applied by VicUrban as a part of its regeneration strategy for the Dandenong "Transit City", 25kms SE of central Melbourne.

The difficulties with this option are the need for new legislation and the unpopularity of new taxes, notwithstanding any value uplift that might be enjoyed by those being taxed. There is also the

question of fairness, with such taxes being applied selectively as opposed to all situations where significant uplift through public action occurs.

6.2.4 Broad Based Value Capture

Principles

Our review of practice in Australia and the UK suggests that two key principles should be kept to the fore when framing an appropriate broad based value capture strategy for New Zealand.

Firstly, the three forms of 'development contribution' discussed in Section 3 need to be kept separate in conceptual terms and in the drafting of legislation. As noted, rules of 'fairness' and cost apportionment vary greatly between these categories of contribution. Bundling them together in legislation in the hope that day to day practice will clarify 'reasonable' application of developer levies under these three conceptual frameworks is likely to be a recipe for confusion and litigation.

We recommend that, regardless of the approach taken to broad based value capture in New Zealand, there should be separate Government guidelines on how infrastructure charges, impact mitigation levies and betterment levies are to be scaled, apportioned and managed.

Secondly, it seems clear that any value capture strategy which relies solely on market valuations of property at the time of 're-zoning' is likely to be unworkable, simply because, the market tends to anticipate up-zonings. We recommend that, again, regardless of the value capture method applied in New Zealand, the value of development rights should be assessed separately from the market circumstances of any particular transaction subject to the betterment levy. The ACT experience with the proposed 'schedulising' of change of use charges is useful in this regard.

Options

We see three options for a broad based value capture system in New Zealand:

- A codified betterment levy operated through planning legislation or a new statute;
- A codified betterment levy operated with a new system of 'development licences'; and
- A regulated framework for negotiated agreements to capture a share of betterment.

Codified betterment levy

This option envisages that a schedule of land values by development type, as per the ACT example, can be established for each district in the country. This could be managed and updated through the standard valuation practices of local municipalities as they go about maintaining their property data bases for rating purposes.

Having established this schedule, a codified betterment levy would become payable with each development consent. This system could be implemented through a variety of legislative vehicles. These include:

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- National 'value capture' legislation which would require Councils to collect and remit to the Central Government, a betterment tax calculated on regionally / locally differentiated schedules.
- National legislation which would require District Councils to collect and remit such taxes to the host Regional Council, for distribution back to constituent municipalities on priorities determined by the relevant regional Council.
- Modification of the RMA and/or the local government legislation to enable District / City Councils to collect and deploy betterment taxes based on the local schedules, as they see fit.

Arguably, the second of these approaches, involving collection and priority setting at the regional level would be preferable, as it accords best with the notion that the value of development rights is generated on a 'whole of urban system' basis.

Codified betterment levy operated through 'development licences'

This option would also involve a nation wide schedule of land values by development type. However, the scheduled betterment levy would not be tied to the development approval process as such. Rather, the development proponent would, prior to securing a development approval, apply and pay for a licence which would provide a time bounded entitlement to use any site within the nominated district for a given quantum and mix of floorspace (or other measure of development intensity).

In many respects, this option would operate in the same way as the first, including the potential for administration via national, regional or local mechanisms. However, it allows for public regulation of the quantity of development licences available in a given development market. Clearly, it is vital that this is not used to unduly restrict supply side capacity, or to erect barriers to entry. The supply of licences would need to be ample vis a vis underlying demand for various forms of floorspace in the district. The advantage of regulating the supply of licences is that land sellers may feel a greater imperative to compete for the available pool of development proponents. This could mitigate any tendency for betterment levies to be passed forward to end users.

Negotiated agreements

Under this option, Central Government guidelines would be established to guide negotiations between approval authorities and development proponents regarding planning gain. The guidelines would clearly distinguish between infrastructure charges, impact mitigation payments and value capture. They would require that approval authorities **not** seek to use the latter category as a full or part substitute for the former two. The guidelines would also incorporate the same national data base of development right values that would inform the two codified betterment levy options discussed above.

Proponents and approval authorities would engage in negotiations in the knowledge that should these break down and end up in court, the court would, in the first instance, resort to the 'value of development rights' schedules to determine the reasonableness or otherwise of the proponent's and/or the approval authority's position. Given that these ground rules would be set up front, the negotiation process may be more disciplined and stream-lined on the part of all players in the

process, thereby counteracting some of the risk, uncertainty and delay issues which have bedevilled recent UK models of negotiated value capture.