



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 7

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021

Report 9

August 2021

7



www.parliament.nsw.gov.au

Portfolio Committee No. 7 - Planning and Environment

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021

Ordered to be printed 10 August 2021 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Portfolio Committee No. 7 – Planning and Environment.

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 / Portfolio Committee No. 7 – Planning and Environment [Sydney, N.S.W.] : the Committee, 2021. [x, 46] pages ; 30 cm. (Report no. 9 / Portfolio Committee No. 7 – Planning and Environment)

“August 2021”

Chair: Cate Faehrmann, MLC.

ISBN 9781922543318

1. New South Wales. Parliament—Legislative Assembly—Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021.
2. New South Wales—Environmental Planning and Assessment Act 1979.
3. Environmental law—New South Wales.
4. Infrastructure (Economics)—New South Wales.
5. Land use—Law and legislation—New South Wales.
6. Regional planning—Law and legislation—New South Wales.
 - I. Faehrmann, Cate.
 - II. Title.
- III. Series: New South Wales. Parliament. Legislative Council. Portfolio Committee No. 7 – Planning and Environment. Report ; no. 9

346.944045 (DDC22)

Table of contents

	Terms of reference	v
	Committee details	vi
	Chair's foreword	vii
	Recommendation	viii
	Conduct of inquiry	ix
Chapter 1	Overview	1
	Overview of the New South Wales infrastructure contributions system	1
	NSW Productivity Commission review	3
	Referral of the Bill	4
	Overview of the Bill's provisions	4
Chapter 2	Key issues	7
	Regulations and stakeholder consultation	7
	Timing of infrastructure contributions payments	10
	Fixed development consent levies	13
	Regional infrastructure contributions	14
	Land value contributions	15
	Impacts on local government	18
	Review of the rate pegging system	21
	Essential works list	23
	Affordable housing supply	24
	Proposed amendments to the Bill	27
	Committee comments	28
Appendix 1	Submissions	30
Appendix 2	Witnesses at hearing	35

Appendix 3 Minutes

37

Terms of reference

That:

- (a) the [Environmental Planning and Assessment Amendment \(Infrastructure Contributions\) Bill 2021](#) be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report,
- (b) the committee report by 10 August 2021.

The terms of reference were referred to the committee by the Legislative Council on 24 June 2021.¹

¹ *Minutes*, NSW Legislative Council, 24 June 2021, p 2387.

Committee details

Committee members

Ms Cate Faehrmann MLC	The Greens	<i>Chair</i>
The Hon Mark Pearson MLC	Animal Justice Party	<i>Deputy Chair</i>
The Hon Catherine Cusack MLC	Liberal Party	
The Hon Ben Franklin MC	The Nationals	
The Hon Rose Jackson MLC	Australian Labor Party	
The Hon Mark Latham MLC**	Pauline Hanson's One Nation	
The Hon Shayne Mallard MLC	Liberal Party	
The Hon Adam Searle MLC*	Australian Labor Party	

Contact details

Website	www.parliament.nsw.gov.au
Email	PortfolioCommittee7@parliament.nsw.gov.au
Telephone	02 9230 3313

* The Hon Adam Searle MLC substituted for the Hon Penny Sharpe MLC from 9 July 2021 for the duration of the inquiry.

** The Hon Mark Latham MLC is a participating member for the duration of the inquiry.

Chair's foreword

The Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) was referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report.

The Bill amends the *Environmental Planning and Assessment Act 1979* and forms part of a broader reform package to improve the infrastructure contributions system in New South Wales. These reforms have resulted from a review of the infrastructure contributions system by the NSW Productivity Commission, which made 29 recommendations to improve the system, all of which have been agreed to by the NSW Government.

The Bill itself contains enabling legislation to support some aspects of the broader reform package. It amends the Act to introduce a regional infrastructure contributions scheme in the high-growth regions of Greater Sydney, Hunter, Central Coast, and Illawarra-Shoalhaven, and introduce a direct land contribution for landowners who benefit from their land being rezoned for development. It also allows the Minister to set the timing of contributions payments, provides incentives for councils to fund infrastructure upfront and makes further provision for existing local infrastructure contributions.

During the inquiry, the committee considered a number of concerns that were raised by stakeholders relating to the proposed amendments in the Bill, as well as the broader reform package. One of the key issues raised was the lack of detail in the Bill and the absence of the corresponding directions and draft regulations. Many stakeholders were not clear on how this Bill would impact them, with local councils particularly concerned that they could lose up to 50 per cent of infrastructure contributions revenue, individual landowners frustrated that they will be required to pay an additional tax for their land and developers unsure whether they will also be paying more in contributions. It was also not clear if the changes to the system will in fact enhance affordable housing supply.

The committee also received evidence regarding a number of outstanding reviews and consultation processes that impact substantially on the implementation of these reforms, including the associated draft regulations, rate pegging and benchmarking of costs. Without these important details it was impossible for the committee to determine whether or not the Bill will make positive changes to the infrastructure contributions system. We could not see how it was going to be implemented or how stakeholders involved in the system will be affected.

Given this uncertainty, the committee agreed that the Bill should not proceed, until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal. These are significant reforms to the infrastructure contributions system and we want to see that they are done right.

On behalf of the committee, I would like to thank all who participated in the inquiry. I would also like to thank committee members for their considered contributions and the secretariat for their assistance.

Finally, I present the report to the House and call on members of the Legislative Council to consider the views of this committee and the stakeholders who provided evidence during this inquiry when the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 is brought forward for debate in the House.



Cate Faehrmann MLC
Committee Chair

Recommendation

Recommendation 1

29

That the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 not proceed, until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 24 June 2021.

The committee received 159 submissions and 3 supplementary submissions. The committee also received two pro forma documents.

The committee held one public hearing via videoconference on Friday 16 July 2021.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, and answers to supplementary questions and questions on notice.

Chapter 1 Overview

This chapter begins with an overview of the current New South Wales infrastructure contributions system and the findings of the NSW Productivity Commission review into the system. It then provides an overview of the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021.

Overview of the New South Wales infrastructure contributions system

- 1.1 Infrastructure contributions² are payments made by developers to provide funding to local councils and State Government for the delivery of local, regional and state infrastructure to support their developments. This includes supporting infrastructure such as roads, transport infrastructure, storm water and drainage systems, open space, sports and recreation facilities, biodiversity and environmental conservation areas and other community services.³
- 1.2 The legislative framework underpinning the infrastructure contributions system includes the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).⁴
- 1.3 There are two types of infrastructure funded by contributions; local infrastructure and state and regional infrastructure. The below table details the funding differences between the two types of infrastructure, which section of the EP&A Act they are collected under and the purpose of the contribution.⁵

² Infrastructure contributions are also referred to as development contributions and developer charges.

³ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 5.

⁴ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), pp 8-9.

⁵ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 6.

Table 1 Relationships between the EP&A Act and types of infrastructure funded through the infrastructure contributions system

Type of contribution	Collected under	Collected by	Purpose of the contribution
Contributions for local infrastructure based on scale of the development	EP&A Act Section 7.11	Councils	Fund local infrastructure to enable development
Contributions for local infrastructure based on development costs	EP&A Act Section 7.12	Councils	Fund local infrastructure to enable development
Contributions negotiated between a planning authority and a developer	EP&A Act Section 7.4	State Government and Councils	Fund innovative infrastructure solutions not funded by the other mechanisms
Contributions for state and regional infrastructure	EP&A Act Section 7.23	State Government	Fund state and regional infrastructure

NSW Government, Department of Planning, Industry and Environment, NSW infrastructure contributions guide (February 2021), p 6.

- 1.4** As shown above, local infrastructure contributions are collected by local councils under sections 7.11 and 7.12 of the EP&A Act and in accordance with local infrastructure contributions plans. Special infrastructure contributions are required by the State Government through determinations and directions made by the relevant Minister. Planning agreements are also used as an alternative mechanism available for funding or delivering state and local infrastructure.⁶
- 1.5** In terms of local infrastructure contributions, these are levied through conditions of development consent and can be made as:
- money paid by developers and used for the costs of buying land or providing infrastructure
 - land dedicated free of cost by developers for the provision of infrastructure
 - in some cases, by works in kind, which are works undertaken by the developer and transferred to the government or council on completion.⁷
- 1.6** Some types of development may be exempt from paying contributions for a variety of strategic, economic or social purposes. This is determined by local councils based on individual local

⁶ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 6.

⁷ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 7.

contribution plans, with some exemptions made by the Minister through ministerial directions, as well as certain types of Crown developments which are exempted through Circular No. D6.⁸

- 1.7 Local councils are responsible for developing and adopting local contributions plans, negotiating planning agreements, collecting infrastructure levies and building the local infrastructure that the levies go towards. If a local council wishes to charge a contribution rate above the review thresholds, then the Independent Pricing and Regulatory Tribunal (IPART) is responsible for reviewing and approving these contributions plans. The current thresholds are \$20,000 per lot/dwelling and \$30,000 per lot/dwelling in identified urban release and greenfield areas.⁹

NSW Productivity Commission review

- 1.8 In April 2020, the Hon Rob Stokes MP, Minister for Planning and Public Spaces, requested the NSW Productivity Commission to undertake a review of the New South Wales infrastructure contributions system.¹⁰
- 1.9 The terms of reference of the review required the NSW Productivity Commission to:
- determine whether the system meets the objectives of certainty and efficiency while delivering public infrastructure required to support development
 - make recommendations for reform aimed at delivering a principles-based system
 - identify legislative and regulatory changes necessary to implement the proposed reforms.¹¹
- 1.10 Over the course of 2020, the NSW Productivity Commission undertook consultation with local government, state agencies, industry, community groups, and other stakeholders through roundtables and targeted discussions. It also received 87 public submissions, and undertook research and modelling to inform the review's findings and recommendations.¹²
- 1.11 The NSW Productivity Commission handed down its report in November 2020. In the report, the Commission described the current infrastructure contributions system as 'complex, inefficient, inconsistent and lacks transparency' and found that it did not adequately fund the infrastructure required for growth or support efficient development. The report made 29 recommendations to improve the efficiency and transparency of local and state infrastructure contributions.¹³

⁸ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 7.

⁹ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), pp 7-8.

¹⁰ NSW Government, Commissioner for Productivity, *Infrastructure Contributions Review*, <<https://www.productivity.nsw.gov.au/infrastructure-contributions-review>>.

¹¹ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), p 3.

¹² NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), p 3.

¹³ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), pp 3-4.

- 1.12** In March 2021, the NSW Government responded to the NSW Productivity Commission's report and agreed to all 29 recommendations. The NSW Government committed to progressing the review's recommendations in line with an implementation roadmap, developed by the Department of Planning, Industry and Environment.¹⁴
- 1.13** Mr Peter Achterstraat AM, the NSW Productivity Commissioner, told the committee that the 29 recommendations in the report form a package of proposed reforms that 'will deliver a transparent, certain, efficient, consistent, and simpler contributions system that will unlock new housing supply, deliver vital infrastructure, and boost investment in New South Wales'. Mr Achterstraat explained that several recommendations in the report require legislative and regulatory amendments and that the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) contains the enabling legislation to support execution of the reform package.¹⁵

Referral of the Bill

- 1.14** As part of the government's infrastructure contributions reforms, the Bill was introduced in the Legislative Assembly on 22 June 2021 by the Treasurer, the Hon Dominic Perrottet MP. The Bill was introduced as a cognate Bill with the Appropriations Bill 2021.¹⁶
- 1.15** The Treasurer gave his second reading speech in the Legislative Assembly on 22 June 2021, commenting that the infrastructure contributions reforms will 'unlock housing supply faster and more efficiently to make more homes available and more affordable'. Debate on the Bill was adjourned.¹⁷
- 1.16** On 24 June 2021, the Bill was separated from the Appropriation Bill 2021 in the Legislative Assembly.¹⁸ Subsequently in the Legislative Council, the Hon Damien Tudehope MLC, Leader of the House in the Legislative Council, moved that the provisions of the Bill be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report by 10 August 2021. The motion was agreed to by the House.¹⁹

Overview of the Bill's provisions

- 1.17** The object of the Bill, as set out in the explanatory note, is to amend the EP&A Act and other instruments to:
- enable a contributions plan to identify land in a land value contributions area for the purpose of requiring a land value contribution for the land
 - establish a regional infrastructure contributions scheme

¹⁴ NSW Government, Commissioner for Productivity, *Infrastructure Contributions Review*, <<https://www.productivity.nsw.gov.au/infrastructure-contributions-review>>.

¹⁵ Submission 152, NSW Productivity Commissioner, p 1.

¹⁶ *Hansard*, NSW Legislative Assembly, 22 June 2021, pp 2-12 (Dominic Perrottet).

¹⁷ *Hansard*, NSW Legislative Assembly, 22 June 2021, p 11 (Dominic Perrottet).

¹⁸ *Hansard*, NSW Legislative Assembly, 24 June 2021, p 1 (Mark Speakman).

¹⁹ *Hansard*, NSW Legislative Council, 24 June 2021, p 8 (Damien Tudehope).

- make further provision for existing local infrastructure contributions
- make other consequential amendments.²⁰

1.18 The NSW Department of Planning, Industry and Environment advised that this Bill 'will provide the foundations for a stronger infrastructure contributions system by matching infrastructure funding with infrastructure outcomes for new and growing communities'. The Department explained that the reforms will include:

- a regional infrastructure contributions system to collect levies on development in Greater Sydney, Central Coast, Hunter and the Illawarra Shoalhaven while preserving existing special infrastructure contribution arrangements,
- requiring owners who benefit from their land being rezoned for development to contribute towards the provision of land for local infrastructure when their land is either sold or developed,
- greater transparency and accessibility for planning agreements, and
- incentives for councils to fund infrastructure upfront, allowing councils to borrow and pool their funds.²¹

1.19 The NSW Government intends for the new infrastructure contributions system to be implemented and in place by 1 July 2022.

²⁰ Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021, First Print, Explanatory Note, p 1.

²¹ NSW Department of Planning, Industry and Environment, *Improving the infrastructure contributions system* (23 June 2021), < <https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system>>.

Chapter 2 Key issues

This chapter considers a number of key issues in relation to the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 raised by stakeholders.

Regulations and stakeholder consultation

- 2.1** As noted in chapter 1, the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) was introduced in Parliament on the 22 June 2021. Many stakeholders who provided evidence to this inquiry were deeply concerned about the lack of consultation on the specifics of the Bill and that the regulations are yet to be made publicly available.
- 2.2** A number of key stakeholders highlighted that they had not been consulted with about the detail of the Bill. For instance, Cr Linda Scott, President, Local Government NSW, expressed her disappointment that 'the New South Wales Government has not consulted with local councils or significant stakeholders on the exposure draft of this Bill'.²²
- 2.3** Likewise, Cr Clover Moore, Lord Mayor, City of Sydney, said that this Bill 'will radically change the way local infrastructure is planned, funded and delivered' and there has been 'no public consultation'.²³
- 2.4** Port Macquarie Hastings Council also highlighted that infrastructure contributions are a 'critical function' to development in the community and that they need time to engage with their community to 'comprehensively understand the financial implications and cost shifting outcomes to all the parties impacted upon the legislation'.²⁴ Similarly, the City of Ryde Council highlighted that 'the lack of direct consultation with the wider community is a missed opportunity to increase understanding with respect to how local and state governments ensure growth is contributing to amenity and infrastructure provision'.²⁵
- 2.5** The Housing Industry Association was also concerned that the amendments set out in the Bill 'have not been the subject to consultation with residential building and development industry or with the community'. The Association argued that the details set out in the Bill, particularly in relation to the new land value contributions scheme, 'are extremely limited', and that it 'has a range of questions and concerns that we believe should be addressed prior to the Bill proceeding'.²⁶
- 2.6** Alongside the lack of consultation on the specifics of the Bill., many stakeholders called for the publication of the draft regulations and corresponding detail prior to the Bill being passed.²⁷

²² Evidence, Cr Linda Scott, President, Local Government NSW, 16 July 2021, p 10.

²³ Evidence, Cr Clover Moore, Mayor, City of Sydney, 16 July 2021, p 9.

²⁴ Submission 86, Port Macquarie Hastings Council, p 1.

²⁵ Submission 146, City of Ryde Council, p 2.

²⁶ Submission 104, Housing Industry Association, p 1.

²⁷ Submission 98, Local Government NSW, p 3; Submission 102, City of Sydney, p 3; Submission 100, Riverina Joint Organisation, p 1; Evidence, Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils, 16 July 2021, p 12; Evidence, Cr Rick Firman OAM,

- 2.7** For example, Local Government NSW strongly opposed the Bill in its current form until the details of all proposed regulatory changes, ministerial directions and subordinate legislation is released for scrutiny and extensive consultation with stakeholders takes place. It considered that the Bill 'is akin to the State Government asking councils to sign over a blank cheque and say "trust me"²⁸.
- 2.8** The Urban Development Institute of Australia NSW commented that the Bill 'is insufficient on its own to be confident that the reform will achieve its objectives and deliver more homes, reduce inequality and improve environmental outcomes'. It added that 'as an industry, we are extremely nervous about the potential for this reform to go awry', and would have liked to have seen the detail in the Bill, as at this stage 'we can only take the NSW Government at its word'.²⁹
- 2.9** Mr Tom Forrest, Chief Executive Officer, Urban Taskforce Australia, agreed with other stakeholders that the Bill 'has been rushed through'. Mr Forrest noted concerns that the 'technical work is going to be done after you have considered the Bill', commenting 'it just seems bizarre'.³⁰
- 2.10** Likewise, Ms Sue Weatherley, Chair, Policy Committee, Planning Institute Australia, was of the view that 'there would be value in having a better understanding of the complete package and how it all works together'. Ms Weatherley highlighted that it is 'not just the ministerial directions and the regulations; there is also some additional work to be done'. She added that 'while supporting the principles of the Bill, some of the detail does need further monitoring and care'.³¹
- 2.11** However, Ms Lauren Conceicao, Acting NSW Executive Director, Property Council of Australia, held a different view. Ms Conceicao indicated that although the Bill only sets out the legislative machinery required to implement the full reforms, the NSW Productivity Commission report provides the detail in its development plan and sets clear timeframes for implementation. She told the committee that they therefore supported the Bill if the government follows this plan:

Chairman, Riverina Joint Organisation, 16 July 2021, p 13; Evidence, Mr Tom Forrest, Chief Executive Officer, Urban Taskforce Australia, 16 July 2021, p 38; Submission 76, Inner West Council, p 1; Submission 84, Campbelltown City Council, p 2; Submission 85, The Hills Shire Council, p 1; Submission 86, Port Macquarie Hastings Council, p 1; Submission 87, Willoughby City Council, pp 10-11; Submission 89, City of Newcastle, p 1; Submission 91, NSW Minerals Council, p 2; Submission 92, Canterbury Bankstown Council, p 6; Submission 93, Wollondilly Shire Council, p 1; Submission 97, Tamworth Regional Council, p 1; Submission 99, Northern Sydney Regional Organisation of Councils (NSROC), p 3; Submission 103, Liverpool City Council, pp 1-2; Submission 104, Housing Industry Association, p 2; Submission 144, Shellharbour City Council, p 1; Submission 146, City of Ryde Council, p 2; Submission 147, Randwick City Council, p 1; Submission 148, City of Parramatta Council, p 1; Submission 149, Woollahra Municipal Council, pp 1-2; Submission 150, Ku-ring-gai Council, p 2; Submission 153, Camden Council, p 5; Submission 156, Bayside Council, p 1; Submission 158, Lake Macquarie City Council, p 1.

²⁸ Submission 98, Local Government NSW, pp 3-4.

²⁹ Submission 90, Urban Development Institute of Australia NSW, pp 1-2.

³⁰ Evidence, Mr Forrest, 16 July 2021, pp 35 and 38.

³¹ Evidence, Ms Sue Weatherley, Chair, Policy Committee, Planning Institute Australia, 16 July 2021, p 46.

With the exception of any major amendments to the Bill or any major swings in the regulations that do not reflect the intention of the Productivity Commissioner's report, we would wholeheartedly support the passage of this Bill, recognising that there is more work to be done that sits below it.³²

2.12 The NSW Productivity Commissioner, Mr Peter Achterstraat AM, appeared before the committee and explained how the Bill was implementing the Commission's reforms. Mr Achterstraat confirmed that the Bill does implement a number of key recommendations from the Commission's report, including regional infrastructure contributions, direct land contributions and section 7.12 adjustments.³³

2.13 When questioned as to whether the Bill should wait until the consultation process for the entire infrastructure contributions reform takes place, Mr Achterstraat replied:

I think the parts of the Bill which are the regional infrastructure contribution and the land component, I am quite comfortable with that being implemented. The regulation ones, it may well be that there is more discussion needed on those.³⁴

2.14 In response to the concerns raised regarding the lack of consultation on the Bill, the Minister for Planning and Public Spaces, the Hon Rob Stokes MP, detailed a number of ongoing stakeholder engagement groups involved in the development of the reforms, including:

- the Oversight Steering Committee, who meet on a monthly basis with senior representatives from the Department of Planning, Industry and Environment and the Treasury
- the External Advisory Group, who meet on a monthly basis with representatives from key stakeholder groups³⁵
- the Agency Reference Group, who meet every six weeks with representatives from state agencies³⁶
- a group of metropolitan and regional councils, who meet every six weeks.³⁷

2.15 Minister Stokes also advised that a number of Technical Working Groups will be established on particular issues to support detailed work associated with the reforms, for example on regional infrastructure contributions and the land value contributions. Minister Stokes added that the

³² Evidence, Ms Lauren Conceicao, Acting NSW Executive Director, Property Council of Australia, 16 July 2021, pp 45-46.

³³ Evidence, Mr Peter Achterstraat AM, NSW Productivity Commissioner, 16 July 2021, p 2.

³⁴ Evidence, Mr Achterstraat, 16 July 2021, p 6.

³⁵ Stakeholders involved in this group include Urban Development Institute of Australia, Property Council of Australia, Urban Taskforce Australia, Local Government NSW, Local Government Professionals NSW, Planning Institute of Australia, Community Housing Industry Association, Landcom, GLN Planning (technical expert).

³⁶ State agencies involved in this group include Transport, Health, Education, Treasury, Investment NSW, Regional NSW, Customer Service and Infrastructure NSW.

³⁷ Answers to supplementary questions, Hon Rob Stokes MP, Minister for Planning and Public Spaces, 22 July 2021, p 8.

Technical Working Groups are expected to meet over the period of July to October 2021, with the timing dependent on the nature of the discussion, but possibly weekly or fortnightly.³⁸

2.16 When questioned on whether stakeholders were consulted specifically on the drafting of the Bill, Minister Stokes advised:

Following receipt of a complete working draft of the Bill on 11 May 2021, the Department arranged a briefing session for all members of the External Advisory Group ... on Thursday, 13 May 2021. All members were invited, but not all took up the option to attend. Those attending included the Property Council and Urban Development Institute of Australia (UDIA). Local Government NSW (LGNSW) indicated that they could not attend and briefings were held for them on 26 May 2021 and 22 June 2021.

Key elements of the Bill were also discussed at other meetings and events, such as regular fortnightly updates with industry and council, and including the External Advisory Group meeting on 14 July.

Feedback was received up until the Bill was tabled in Parliament and is still being taken from all stakeholders.³⁹

2.17 In terms of when stakeholders will see the regulations and corresponding guidelines and practice notes associated with the Bill, Minister Stokes advised that 'the following policy instruments are currently scheduled for exhibition in October 2021 with completion by 1 July 2022':

- Draft Regulations
- Regional Infrastructure Contributions State Environmental Planning Policy
- Practice Notes for local infrastructure contributions
- Local Plan making guidelines
- Digital tool demonstration.⁴⁰

Timing of infrastructure contributions payments

2.18 In response to the COVID-19 pandemic, section 7.17 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended to allow the Minister to determine the timing at which infrastructure contributions are to be made. Subsequently, the Minister issued a direction that temporarily required councils to defer the payment of local infrastructure contributions and levies until at least the issuing of the first occupation certificate. This was part of a whole-of-government response to stimulate the economy during the COVID-19 pandemic.⁴¹

³⁸ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 8.

³⁹ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 12.

⁴⁰ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 17.

⁴¹ NSW Government, *COVID-19 Responses measures: Ministerial Directions – Infrastructure contributions* (July 2021), < <https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/faqs-infrastructure-contributions-timing-of-payment-2020-09.pdf?la=en>>

- 2.19** Under the proposed Bill, section 7.17 will be amended to permanently allow the Minister to set the timing of contributions payments, giving the Minister the ability to extend the provision for payments to be made at the occupation certificate stage.⁴²
- 2.20** Stakeholders had mixed views about the timing of infrastructure contributions payments. In support of payments being made at the occupation certificate stage, Urban Taskforce Australia told the committee that 'this will assist getting projects moving when cash flow is often tight' and 'will improve the productivity of the housing supply industry'.⁴³
- 2.21** Mr Forrest reiterated their support for this proposal. He noted the difficulty for developers having a tax in place up-front before funds commence flowing in, and that this starts to make the feasibility of any development moving forward 'a hell of a lot more difficult'. He added that 'if that causes some problems for local councils in terms of their tax flow, we would also support some supplementation being offered to councils to facilitate them with their cash flow issues'.⁴⁴
- 2.22** When asked if this leads to a greater supply of housing stock, Mr Forrest told the committee that 'it already has'. He reported that during the COVID-19 period there was a lot of 'nervousness' about starting construction as no-one knew what would happen to the housing market and in the end there was a 'housing price boom'. Mr Forrest added that this 'is a very positive initiative and it is one that should be supported going forward'.⁴⁵
- 2.23** However, other stakeholders disagreed with this proposal. For example, Mr John Engeler, Chief Executive Officer, Shelter NSW, said that 'generally, we would support not delaying' as it provides 'certainty, efficiency and effectiveness' to the works to be undertaken and is better for councils to have that 'sooner rather than later' so they can plan for the infrastructure.⁴⁶
- 2.24** Speaking on behalf of councils, Local Government NSW strongly objected to the new permanent provisions giving the Minister the power to set the timing of contributions payments. It provided a number of reasons why this measure should not be made permanent, including:
- it will delay provision of essential community infrastructure or require existing communities to carry the burden of paying for the infrastructure costs for new developments until the payments are made
 - many councils currently do not have the financial capacity to forward fund multiple infrastructure projects while awaiting vital contributions payments from developers
 - councils already face issues recovering significant sums of money owed for infrastructure contributions where private certifiers have issued Occupational Certificates and this will expose councils to greater risk of default by developers and costly, protracted debt and recovery proceedings.⁴⁷

⁴² Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021, First Print, pp 9-10.

⁴³ Submission 121, Urban Taskforce, p 3.

⁴⁴ Evidence, Mr Forrest, 16 July 2021, p 35.

⁴⁵ Evidence, Mr Forrest, 16 July 2021, p 40.

⁴⁶ Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 16 July 2021, p 23.

⁴⁷ Submission 98, Local Government NSW, pp 8-9.

- 2.25** Many local councils individually expressed their concerns for this permanent change,⁴⁸ including the City of Sydney, which argued that 'this approach is fundamentally flawed, undermines the entire purpose of development contributions and presents a further challenge to the ongoing financial stability of councils'.⁴⁹ Along similar lines, Cr Rick Firman OAM, Chairman, Riverina Joint Organisation, said that 'these appear to be unfettered powers which have the potential to significantly impact on council revenue'.⁵⁰
- 2.26** In response to local government concerns, Minister Stokes highlighted that this does not change the amount of money councils will receive, just the timing of it. The Minister indicated that there is a direct impact of this on housing affordability, as usually a developer will borrow money for this payment, pay interest on this borrowed money, and would pass these costs on to the buyer. He added that 'we have also been operating with that system now for more than a year, and there have been no examples of the sorts of concerns that councils said might come about', commenting that he was happy to commit to a review of this in 12 months' time.⁵¹
- 2.27** In addressing the risk associated with the potential release of an Occupation Certificate prior to payment being confirmed, Mr Achterstraat said that Recommendation 4.9 of the NSW Productivity Commission report will encourage councils to pool funds that can be deployed for early land acquisition and prioritise infrastructure delivery. Mr Achterstraat advised that the Department of Planning, Industry and Environment has been working with the Treasury Corporation to update its procedures to also remove the barrier to councils borrowing from the Corporation.⁵²
- 2.28** In relation to Occupation Certificates and infrastructure payments, Minister Stokes also provided the committee with the proposed mitigation measures:
- the design of digital tools to ensure that Occupation Certificates cannot be issued unless payment of contributions has been made
 - amendments to the *Environmental Planning and Assessment Regulation 2000* to require certifiers to verify contribution payments have been made
 - contributions will be treated as a debt that is recoverable through the courts, making it easier for councils to remedy, in the unlikely event that a certificate is issued without the payment.⁵³

⁴⁸ Submission 100, Riverina Joint Organisation, pp 5-6; Submission 76, Inner West Council, p 6; Submission 85, The Hills Shire Council, p 4; Submission 86, Port Macquarie Hastings Council, p 2; Submission 87, Willoughby City Council, p 9; Submission 89, City of Newcastle, p 4; Submission 92, Canterbury Bankstown Council, p 1; Submission 94, Murray River Council, p 4; Submission 97, Tamworth Regional Council, p 2; Submission 99, Northern Sydney Regional Organisation of Councils (NSROC), p 3; Submission 127, Randwick City Council, p 4; Submission 149, Woolahra Municipal Council, p 4; Submission 151, Hunters Hill Council, p 1; Submission 153, Camden Council, p 3; Submission 154, Hornsby Shire Council, p 6; Submission 157, Lane Cove Council, p 5.

⁴⁹ Submission 102, City of Sydney, p 14.

⁵⁰ Evidence, Cr Firman, 16 July 2021, p 13.

⁵¹ Evidence, Hon Rob Stokes MP, Minister for Planning and Public Spaces, 16 July 2021, p 59.

⁵² Submission 152, NSW Productivity Commissioner, p 4.

⁵³ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 15.

Fixed development consent levies

- 2.29** The NSW Productivity Commission report recommended that the section 7.12 fixed development consent levy maximum rate should be increased from one per cent to three per cent for residential development, with non-residential development remaining at one per cent.⁵⁴
- 2.30** Mr Achterstraat argued that 'the current rate is too low to be viable in many situations where it would be an appropriate tool'. He noted that the Commission's review found 'a higher rate for section 7.12 that is lower than what most section 7.11 plans are equivalent to, would strike the right balance', and would 'allow councils to more easily fund the infrastructure required to support development, without having to establish full nexus and apportionment as required under section 7.11'.⁵⁵
- 2.31** However, the Urban Taskforce Australia raised concerns with increasing the local section 7.12 fixed development levies, in particular that there is no avenue to appeal.
- 2.32** Mr Aaron Gadiel, Urban Taskforce Australia, told the committee that section 7.12 is a fixed levy and 'is not currently subject to any appeal right because it is effectively a tax'. He commented that raising the levy has created 'an uncontrolled inflation' of this rate, and given this 'there should be some sort of appeal right'.⁵⁶
- 2.33** Urban Taskforce Australia also highlighted the risk of potential double-dipping, where the land value contribution may be required in addition to local infrastructure contributions under section 7.11 and the new local levy under section 7.12. It indicated that this is particularly the case when different levy 'setters' and decision makers are responsible for the various charges, and currently both councils and the department have 'limited resources and capacity to undertake timely, strategic and sensible assessments of infrastructure plans'. It recommended that 'independent oversight of the setting of local levies and charges is needed to manage the quantum, ensure a nexus and remove double-dipping'.⁵⁷
- 2.34** In response to the concerns about the lack of an appeal mechanism to section 7.12 levies, Minister Stokes argued the benefits of certainty and the perils of litigation:

In relation to appeals, the only thing I would say is that the last thing we want is for this to be a heavily litigated area because that just slows everything down ... I am keen to provide the certainty up-front. If the certainty does not work, then the developer does not have to continue with that scheme. The appeal mechanism should not really be necessary because if you get this worked out early enough you avoid those arguments, which is really the point of this—basically, to make it clear right at the beginning of the process what everyone is going to be up for.⁵⁸

⁵⁴ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), p 9.

⁵⁵ Answers to supplementary questions, Mr Peter Achterstraat AM, NSW Productivity Commissioner, 22 July 2021, p 5.

⁵⁶ Evidence, Mr Aaron Gadiel, Urban Taskforce Australia representative on the Land and Environment Court Users Group and Partner at Mills Oakley, 16 July 2021, p 40.

⁵⁷ Submission 121, Urban Taskforce Australia, p 8.

⁵⁸ Evidence, Minister Stokes, 16 July 2021, p 60.

Regional infrastructure contributions

- 2.35** The Bill introduces a regional infrastructure contributions scheme.⁵⁹ The regional infrastructure contributions scheme will be introduced via a new State Environmental Planning Policy (SEPP) that will bring together a number of determinations, directions and orders into one instrument. A new fund will be established to collect regional infrastructure contributions and this will be administered by the NSW Treasury. Funds collected will be used for spending towards growth enabling infrastructure in priority growth areas and will require the Treasurer's approval in consultation with the Minister for Planning and Public Spaces.⁶⁰
- 2.36** In explaining the areas and rates for the new regional infrastructure contributions scheme, Mr Achterstraat advised that it had been initially 'recommended for the high-growth regions of Greater Sydney, Hunter, Central Coast, and Illawarra-Shoalhaven, with potential roll-out to other areas in the future'. Mr Achterstraat provided the following indicative rates that have been proposed under the new scheme, subject to further development feasibility testing:
- \$10,000–\$12,000 per dwelling for residential development in Greater Sydney
 - \$8,000–\$10,000 per dwelling for residential development in the Central Coast, Hunter, and Illawarra-Shoalhaven
 - \$10–\$40 per square metre of floor space for commercial and industrial development in the identified regions.⁶¹
- 2.37** The main concern from stakeholders regarding the new regional infrastructure contributions scheme was the ability for rates to be paid in one local government area and then spent in an entirely different government area.
- 2.38** The City of Sydney argued that 'regional infrastructure contributions and transport contributions will take monetary contributions from local communities to spend anywhere within a wider region'. It noted that the Bill does not provide any 'apparent requirement for a clear plan for the allocation of regional contributions and no commitment to transparent reporting on how they are spent'.⁶²
- 2.39** Likewise, Cr Firman observed that the requirement to pay a regional contribution is contained in a SEPP, which means it could cover any part of the state, including rural and regional New South Wales.⁶³
- 2.40** Mrs Julie Briggs, Chief Executive Officer, Riverina Joint Organisation, said that they are concerned that if the regional infrastructure contributions is extended to rural and regional areas it will put these councils in a difficult situation with developers. She noted that developers might put pressure on councils to reduce section 7.11 and 7.12 contributions, as they are not mandatory, because they already have to pay the regional infrastructure contributions. Mrs Briggs indicated that this 'happens now for councils, on top of the fact that most of the

⁵⁹ Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021, First Print, Explanatory Note, p 2.

⁶⁰ Submission 152, NSW Productivity Commissioner, p 6.

⁶¹ Submission 152, NSW Productivity Commissioner, pp 5-6.

⁶² Submission 102, City of Sydney, p 4.

⁶³ Evidence, Cr Firman, 16 July 2021, p 13.

developments in rural and regional councils are affected by the biodiversity conservation offsets'.⁶⁴

- 2.41** Mr Forrest told the committee that they have 'real concerns about the regional infrastructure charge as it is currently proposed'. Alongside a number of issues documented in their submission, Mr Forrest highlighted that 'there is no real nexus between the regional infrastructure charge raising the taxes and any actual contribution to any particular development', and so therefore 'you can be raising funds in one area of Sydney and spending it completely in another'. He acknowledged that 'having a regional more broadly based fee is something we do support, [but] again, it comes down to the detail, which we do not have before us and we are unable to do the analysis'.⁶⁵
- 2.42** In response to these concerns, Minister Stokes clarified that 'funds collected within a region will be hypothecated to growth enabling infrastructure within the same region'. Minister Stokes advised that the expenditure of regional infrastructure contributions will be incorporated in the state budget-setting process and funding allocation to be determined by the Treasury, Infrastructure NSW and the Department of Planning, Industry and Environment, with the criteria for projects also published online.⁶⁶
- 2.43** Further, Minister Stokes advised that a new SEPP will define where regional infrastructure contributions apply, as well as areas where any strategic biodiversity or transport components of the contribution will also apply. Minister Stokes clarified that any land within these regions that is already subject to a special infrastructure contribution will be excluded from the regional infrastructure contribution.⁶⁷

Land value contributions

- 2.44** The Bill also introduces a direct land contribution for landowners following rezoning. Under this proposal, all landowners in a 'land contributions area' are required to contribute towards the provision of land for public purposes as identified in a section 7.11 contributions plan. Each landowner is required to provide their respective share (through direct dedication of land or as a monetary payment) when the land is sold, or developed, whichever occurs first. The contribution amount is calculated based on the value of land at the time it needs to be acquired.⁶⁸
- 2.45** Mr Achterstraat explained that currently increasing land acquisition costs are 'leading to funding shortfalls for councils' and therefore 'a lack of amenity and open space provision for communities'. Mr Achterstraat advised that 'introducing a direct land contribution for landowners following rezoning can provide early and adequate funding for land', and will address 'issues faced by councils over lags and uncertainties regarding the collection of contributions to support early acquisition'.⁶⁹

⁶⁴ Evidence, Mrs Julie Briggs, Chief Executive Officer, Riverina Joint Organisation, 16 July 2021, p 15.

⁶⁵ Evidence, Mr Forrest, 16 July 2021, p 36.

⁶⁶ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 2.

⁶⁷ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 9.

⁶⁸ Submission 152, NSW Productivity Commissioner, p 5.

⁶⁹ Submission 152, NSW Productivity Commissioner, pp 4-5.

- 2.46** Mr Achterstraat also confirmed that 'the direct land contribution must be *in lieu* of the existing charge for land acquisition in a section 7.11 contributions plan, not additional to the existing contribution as some stakeholders have suggested'. He also noted that Recommendation 4.1 of the NSW Productivity Commission report requires the public exhibition of land requirements and corresponding contribution shares in councils' contributions plan at the time of rezoning, which will provide landowners with certainty and transparency about their obligation.⁷⁰
- 2.47** However, the committee received many submissions from individual landowners who strongly opposed what has been termed as a new tax on landowners in rezoned areas.⁷¹
- 2.48** The Housing Industry Association was also concerned that the Bill seems to assume that the cost of the land value contributions will be borne by the vendor and not impact the future price of land. The Association argued that 'this is not correct', commenting that 'this tax will ultimately be passed along the zoning, subdivision and development process adding to the cost of future housing in NSW and reducing housing affordability'.⁷²
- 2.49** Other key stakeholders, who mostly supported the principal of a land value contribution, were concerned that the Bill does not make it clear how the land value contribution will work.
- 2.50** For example, the Property Council of Australia, who acknowledged their support for these reforms, were concerned that the 'practical processes for assessing, applying, negotiating and paying a land value contribution are still somewhat unclear for industry'.⁷³
- 2.51** Also in support of the land value contribution, the City of Sydney questioned how this will operate in practice and requested the opportunity to model and propose a plan as to how land value contributions would be payable in its local government area.⁷⁴
- 2.52** Dr Cameron Murray, Postdoctoral Research Associate, The University of Sydney, said that the effectiveness of this Bill in raising revenue and pricing the property right that is given through rezoning 'will depend on its implementation'. Dr Murray emphasised that 'there is a lot of subtlety to the implementation and particularly around the valuation differential and the timing of when that value applies, for example'. He commented that 'those details are everything' and will have to be fleshed out in the regulations.⁷⁵

⁷⁰ Submission 152, NSW Productivity Commissioner, p 5.

⁷¹ See for example; Submission 1, Mr Sam Aloï, p1; Submission 2, Mr Nikolaos Maropoulos, p 1; Submission 4, Mr Michael McGrath, p 1; Submission 9, Mrs Maria Zucco, p 1; Submission 45, Mr Johan Majdek, p 1; Submission 54, Mrs Vera Cranney, p 1; Submission 55, Mr Joe Herceg, p 1; Submission 77, Mrs Miriam Boschetti-Zanotti, p 1; Submission 81, Mr Terry Bosnjak, p 1; Submission 88, LPG Holdings Pty Ltd, p 2; Submission 123, Mr Peter Ingall, p 16; Submission 127, Francesco and Maria Gidaro, p 1; Submission 128, Mr Anthony Ziino, p 1; Submission 159, United Realty, p 1; Po forma A, 22 responses, pp 1-2; Pro forma B, 10 responses, p 1.

⁷² Submission 104, Housing Industry Association, p 2.

⁷³ Submission 96, Property Council of Australia, p 8.

⁷⁴ Submission 102, City of Sydney, p 15.

⁷⁵ Evidence, Dr Cameron Murray, Postdoctoral Research Associate, The University of Sydney, 16 July 2021, p 29.

2.53 When asked if this new system being proposed under the Bill moves to a fairer balance of how costs are shared between landowner, developer or homebuyer, Dr Murray agreed it is a much fairer system to be retrieving costs from a landowner who may benefit from rezoning:

Between landowners, buyers, developers et cetera, yeah, I think it is much fairer. So essentially what you are doing is you are creating this revenue stream from whoever happens to win the game and own the land when the rezoning happens and you are taking the funding pressure off everybody else in the system, right, by transferring more of the funding to that person. So I do think it is fairer and more efficient than most other ways of getting revenue and it is going to be fully incident on the landowner who happens to get that additional property right at the time of rezoning.⁷⁶

2.54 In addition, Dr Murray clarified that if it is not a developer who owns the land that is rezoned then they don't need to do anything and would 'just carry on as they were and if they use the land for that use for the next three decades, that is fine, they will not pay that contribution until they sell or they develop'. He added that when/or if they do develop 'they will get a smaller price for it because they will have to pay this contribution – that is all that is going to happen'.⁷⁷

2.55 Mr Gadiel commented that 'there needs to be some assurance that ordinary mums and dads, whose land was technically rezoned from some old-style residential zone to a new kind of residential zone five years ago, are not going to be subject to this vendor tax'.⁷⁸

2.56 In addition, Mr Forrest raised concerns that 'the existing appeal mechanism to the Land and Environment Court has been removed' and this 'must be retained'. Mr Forrest explained that there will be situations where people will 'consider themselves to have been unfairly and unjustly dealt with through this process' and so there will need to be an appeal mechanism or Independent Pricing and Regulatory Tribunal (IPART) review to consider and address these issues.⁷⁹ The Urban Taskforce Australia submission further documented a number of recommendations to alleviate some of their concerns with the land value contribution.⁸⁰

2.57 In response to these concerns, Minister Stokes commented that 'frankly, the current settings do not allow us to raise the right money at the right time using the right mechanisms to pay for the infrastructure we need to unlock opportunities for development in the right areas'. The Minister emphasised that this is not a tax, but a method to unlock rezoned land that is just sitting there and not being developed as there is no way to pay for the infrastructure needed to support it:

I reiterate as a final point that this does not allow me to raise a general tax. I am not the Treasurer; I do not have tax-raising powers. This is only an opportunity to ensure that, at the point of rezoning, a contribution can be captured from that extra value that is created to pay for the sorts of infrastructure we know is going to be needed to unlock the very development that a rezoning envisages.⁸¹

⁷⁶ Evidence, Dr Murray, 16 July 2021, p 32.

⁷⁷ Evidence, Dr Murray, 16 July 2021, p 33.

⁷⁸ Evidence, Mr Gadiel, 16 July 2021, p 37.

⁷⁹ Evidence, Mr Forrest, 16 July 2021, p 36.

⁸⁰ Submission 121, Urban Taskforce, pp 4-5.

⁸¹ Evidence, Minister Stokes, 16 July 2021, p 61.

- 2.58** Minister Stokes explained that the land value contribution will be applicable mostly in greenfield release areas and some brownfield infill development where the land is being up-zoned. The Minister advised that 'the land value contribution will need to be included in a contributions plan and publicly exhibited with the rezoning'. He added that 'this means that it is unlikely to be used in areas where the rezoning plans are publicly exhibited before at least 1 July 2022'.⁸²
- 2.59** Minister Stokes also informed the committee that the Department of Planning, Industry and Environment 'is convening a technical working group to develop detailed case studies on how the land value contribution will operate to inform preparation of regulations'.⁸³

Impacts on local government

- 2.60** The committee received evidence from many local councils that argued that they will be worse off under the proposed reforms in the Bill, which they said would significantly impact their financial viability.
- 2.61** The City of Sydney told the committee that based on their understanding of the proposed reforms, 'local contributions income will be significantly decreased, to the point of impacting the capacity of local government to build and maintain essential infrastructure into the future'. Further, it suggested that the impact will be a shift of contributions income from local councils to the state government and 'there is no guarantee the shifting of income will lead to any improvement in housing affordability, infrastructure delivery or the resilience of local communities'.⁸⁴
- 2.62** Cr Moore provided an estimate of the potential financial impacts based on the information currently in the public domain in relation to the reforms. The City of Sydney estimated that it would have 'a loss of 50 per cent of infrastructure contributions revenue' and if the City were to 'lose 50 per cent of this contribution following the introduction of this Bill, this would equate to an average decrease of \$35 million per annum or at least a \$350 million loss over the 10 year span of the City's long term financial plan'. Cr Moore indicated that 'to recover a 50 per cent reduction in annual developer contributions or \$35 million each year, our ratepayers would face an additional 11 per cent increase in their rates'.⁸⁵
- 2.63** It should be noted that the City of Sydney's estimated losses, as explained in the Lord Mayor's answers to questions on notice, compares an estimated maximum local contribution of \$20,000 under section 7.11 contributions to the NSW Productivity Commissioner's recommendation of approximately \$8,000-\$10,000 per dwelling under section 7.12 contributions. The determination of essential works is subject to an independent review underway by the IPART, which will consider the essential infrastructure needs of growth areas where infrastructure is funded by a section 7.11 contributions plan.⁸⁶

⁸² Answers to supplementary questions, Minister Stokes, 22 July 2021, p 5.

⁸³ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 5.

⁸⁴ Submission 102, City of Sydney, p 4.

⁸⁵ Answers to questions on notice, Cr Clover Moore, Mayor, City of Sydney, 19 July 2021, pp 1-2.

⁸⁶ Answers to questions on notice, Cr Clover Moore, Mayor, City of Sydney, 19 July 2021, pp 1-2; NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), p 9; Answers to supplementary questions, Minister Stokes, 22 July 2021, pp 17-18; Answers to supplementary questions, Attachment 1, Minister Stokes, 22 July 2021, pp 1-7.

- 2.64** Local Government NSW also argued that councils would be worse off under the infrastructure contributions reforms. It noted that whilst 'modelling conducted under the NSW Productivity Commission review indicated that the reforms will benefit councils, modelling conducted by individual councils and Regional Organisations of Councils refutes this conclusion, instead finding many councils will be negatively affected'.⁸⁷
- 2.65** At the hearing, council representatives pointed to modelling commissioned by the Northern Sydney Regional Organisation of Councils (NSROC) which demonstrated the impact to its member councils.⁸⁸ At the time of the hearing this was not publicly available to the committee.
- 2.66** Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, NSW Department of Planning, Industry and Environment, told the committee that they have been engaging with NSROC and have asked to see the modelling on a number of occasions but had not been provided with it.⁸⁹ Minister Stokes invited NSROC to allow them to review the modelling to test their claims.⁹⁰
- 2.67** Following the hearing, the committee was provided with the modelling conducted by GLN Planning for NSROC and each of their council members. The modelling came to the opposite conclusions to that of the NSW Productivity Commission, with the proposed reforms resulting in 'potentially large net income losses over time'. It also found that 'this will place councils under even more pressure to maintain services and assets for existing communities, let alone, catering for the infrastructure needs of growing communities'. The modelling concluded that:
- in the first five years after the reforms commence NSROC's cumulative contributions income as a result of the reforms is expected to be \$158 million lower than business as usual
 - in the 17 years to 2040-41 NSROC's estimated contributions income, depending on the final detail of the reforms, is likely to be \$682 million lower than business as usual.⁹¹
- 2.68** The GLN Planning report also included a detailed list of findings and recommendations to address the impacts of the reforms on the NSROC councils to ensure that they are 'no worse off'.⁹²
- 2.69** As noted above, modelling conducted by the Centre for International Economics for the NSW Productivity Commission on the impacts to local council revenue due to the reform package estimated that:
- the proposed changes would result in a net increase in aggregate council revenue of 6.9 per cent over a 20-year period from 2023-24 to 2042-43 [it was later referred to by the

⁸⁷ Submission 98, Local Government NSW, p 3.

⁸⁸ Evidence, Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils, 16 July 2021, p 16.

⁸⁹ Evidence, Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, NSW Department of Planning, Industry and Environment, 16 July 2021, pp 57-58.

⁹⁰ Evidence, Minister Stokes, 16 July 2021, p 57.

⁹¹ Submission 99a, Northern Sydney Regional Organisation of Councils (NSROC), pp 9-12.

⁹² Submission 99a, Northern Sydney Regional Organisation of Councils (NSROC), pp 13-16.

NSW Productivity Commissioner and the Minister for Planning and Public Spaces as 8.9 per cent]⁹³

- the rates revenue would be around \$925 million per year higher, with increases initially small, but becoming larger over time
- this would be partly offset by lower revenue from contributions (including in-kind contributions), with an increase in revenue from s7.12 contributions would be more than offset by reduced revenue from s7.11 contributions and local planning agreements
- the loss of revenue from infrastructure contributions would be around \$90 million in 2024 (subject to implementation arrangements), increasing to around \$153 million (in nominal terms) after 20 years
- on average the infrastructure contributions would decrease by around \$117 million per year over the 20 year period
- high growth councils would benefit more from the proposed changes:
 - with high growth councils estimated revenue to be around 12.7 per cent higher over the 20 year period in metropolitan areas and 12.2 per cent higher in regional areas (this is largely due to significantly higher rates revenue)
 - with low growth councils estimated revenue to be around 5.2 per cent higher over the 20 year period in metropolitan areas and 3.1 per cent higher in regional areas.⁹⁴

2.70 In terms of this modelling, Mr Achterstraat argued that the 'modelling is robust' and shows that for the first four years revenue is fairly static and then will go up. He said that irrespective of the modelling, the reforms to rate pegging (discussed below) will see councils in growth areas with rate revenue increasing and those in areas where population is not growing they will receive the land component.⁹⁵

2.71 At a hearing, Minister Stokes stated that he was 'very happy to guarantee that over the longer term no council will be worse off [and that] in fact, they will be considerably better off'. The Minister acknowledged that there might be some challenges for councils under the reforms, such as with the timing of payment contributions to the occupation stage, but that there are a few elements that will balance this out, such as the reforms to the rate pegging system. Minister Stokes also highlighted that currently 'there is about \$3.7 billion in developer contributions just sitting in council bank accounts', commenting 'so there is money there already that they are not using'.⁹⁶

2.72 Mr Ray also commented on the \$3.7 billion in unspent infrastructure contributions, noting that this is much higher than it was five years ago, demonstrating a lack of spending from councils:

⁹³ Correspondence from Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, NSW Department of Planning, Industry and Environment, to secretariat, 23 July 2021; Submission 152, NSW Productivity Commissioner, p 2.

⁹⁴ The Centre for International Economics, *Final Report, Evaluation of infrastructure contributions reform in New South Wales* (2 December 2021), pp 1-3.

⁹⁵ Evidence, Mr Achterstraat, 16 July 2021, p 4.

⁹⁶ Evidence, Minister Stokes, 16 July 2021, p 56.

One of the things that we face is councils now currently have about \$3.7 billion in unspent infrastructure contributions across the system. That is 40 per cent higher than it was five years ago. The amount of contributions coming into the system is increasing but councils are not spending, they are not increasing their spending rates, so the balances are going up. A number of measures in this package are directed to enabling more of that balance to be spent more effectively and more quickly.⁹⁷

- 2.73** Other stakeholders reflected on councils holding on to infrastructure contributions funds. For example, Mr Forrest highlighted that sometimes councils will hold on to 'quite large sums of local infrastructure contributions and not actually deliver infrastructure', commenting that it is then the developers who get blamed for that.⁹⁸
- 2.74** Ms Conceicao also commented that when infrastructure is not delivered alongside development it reflects badly on the developer and 'holding onto those contributions is not serving anyone'. She said that 'being able to have this clarity around the system and confidence for all parties involved is an important part of the system in which we all live and participate in', and that 'this Bill seeks to bring that level of light and confidence to this system'.⁹⁹

Review of the rate pegging system

- 2.75** IPART is reviewing the current system for setting council rates revenue (the rate pegging system) to include population growth. Currently New South Wales caps the total amount of rates each council can collect through the rate peg and this is often not enough to cover increased costs associated with population growth. IPART is considering a way of incorporating population growth into the rate peg that balances the need to ensure councils are financially sustainable, whilst protecting ratepayers from excessive rate rises.¹⁰⁰
- 2.76** IPART released a draft report in June 2021 setting out its key findings and draft recommendations for the review and sought feedback on the draft report from stakeholders. IPART also held a public hearing on 20 July 2021. The final report is due to be presented to the Minister for Local Government in September 2021.¹⁰¹
- 2.77** Mr Achterstraat said that reforms to the rate pegging system to reflect population growth is 'a necessary condition for local contributions reform' and is 'critical' to implementing this new system. Mr Achterstraat noted that this will lower councils' financial dependency on infrastructure contributions and provide additional rates revenue and more flexibility over how they spend their contributions. He argued it will also allow councils to fund the general costs

⁹⁷ Evidence, Mr Ray, 16 July 2021, pp 54-55.

⁹⁸ Evidence, Mr Forrest, 16 July 2021, p 38.

⁹⁹ Evidence, Ms Conceicao, 16 July 2021, p 50.

¹⁰⁰ Independent Pricing and Regulatory Tribunal, *Review of the rate peg to include population growth*, <<https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Rate-peg-population-growth/Review-of-the-rate-peg-to-include-population-growth>>

¹⁰¹ Independent Pricing and Regulatory Tribunal, *Review of the rate peg to include population growth*, <<https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Rate-peg-population-growth/Review-of-the-rate-peg-to-include-population-growth>>

from population growth via rates instead of via infrastructure contributions and that this will reduce industry costs and improve development feasibility.¹⁰²

- 2.78** However, local councils were concerned that the rate pegging system is intrinsically linked with the infrastructure contributions reforms.
- 2.79** For example, Local Government NSW strongly objected to the reforms of the rate pegging system to cater for population growth to be linked to the reductions in infrastructure contributions. It stated that 'councils overwhelmingly see the decision to link the two as a cost shift from developers onto ratepayers and councils', and while it acknowledged it could be designed to ensure a net gain to councils, 'the linkage detracts from the primary objective of reducing the negative impacts of rate pegging'. It therefore recommended that the rate peg reforms be decoupled from the infrastructure contributions reform agenda.¹⁰³
- 2.80** Likewise, the NSROC strongly objected to the government linking the rate peg and infrastructure contributions reforms. It said that 'by linking the reforms, government is shifting the cost of meeting increased infrastructure demand from developers to existing rate payers'.¹⁰⁴
- 2.81** Other councils were concerned that the details from the rate pegging review undertaken by IPART have not yet been finalised. Orange City Council raised concerns that the final methodology on how rate pegs will be calculated and applied council to council, is yet to be published. The Council was also concerned that the 'additional income from the rate peg increase will be far smaller than the reduction of section 7.11 income relating to development contingents income, leaving many councils unable to fund the required infrastructure to be delivered as a result of population growth and new development'.¹⁰⁵
- 2.82** The City of Parramatta Council and the Central Coast Council commented that the review of the rate pegging system should be finalised prior to the progress of the Bill.¹⁰⁶
- 2.83** In response, Minister Stokes said that 'there is no direct nexus' in terms of the population cap. Minister Stokes explained that reforms to the rate pegging system is providing councils with the capacity to 'grow their rates base in lock step as their population grows, which gives them more flexibility to pay for goods and services and infrastructure that their growing community needs'. He added that this will fundamentally remove the problem of the 'perverse disincentive on councils to not support growth because it just increased costs without increasing any revenue for them'.¹⁰⁷

¹⁰² Submission 152, NSW Productivity Commissioner, p 3.

¹⁰³ Submission 98, Local Government NSW, pp 11-12.

¹⁰⁴ Submission 99, Northern Sydney Regional Organisation of Councils (NSROC), p 3.

¹⁰⁵ Submission 83, Orange City Council, pp 1-2.

¹⁰⁶ Submission 148, City of Parramatta Council, p 2; Submission 101, Central Coast Council, p 5.

¹⁰⁷ Evidence, Minister Stokes, 16 July 2021, p 58.

Essential works list

- 2.84** IPART is responsible for assessing and approving contribution plans that propose a rate per dwelling above the relevant contributions thresholds.¹⁰⁸ As part of this assessment, IPART will consider (among other things) whether the facilities to which the contributions plan relates to are on the essential works list. The following public amenities or public services are currently considered essential works:
- land for open space (for example, parks and sporting facilities) including base level embellishment
 - land for community services (for example, childcare centres and libraries)
 - land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including car parking
 - land and facilities for stormwater management
 - the costs of plan preparation and administration.¹⁰⁹
- 2.85** In its report, the NSW Productivity Commission considered the essential works list and concluded that it is 'restrictive' and is 'impacting councils' ability to meet service needs and resident's expectations'. It recommended that the essential works list be applied to all section 7.11 contributions plans (not just the plans above the relevant cap) and that IPART undertake a review of the essential works list.¹¹⁰
- 2.86** During this inquiry, the committee received evidence from stakeholders on the problems associated with the essential works list. For instance, the current list only provides for land for community services, not any associated buildings, which makes it difficult for councils to provide these facilities.
- 2.87** For example, Ms Weatherley commented that 'the fact that it excludes community facilities is a very outdated view of local infrastructure needs of communities'.¹¹¹
- 2.88** Local Government NSW argued that by only including the land component of community services facilities this creates significant funding shortfalls for councils to provide such facilities to the community. Therefore, Local Government NSW opposed the NSW Productivity Commission recommendations to further restrict the essential services list to development contingent costs.¹¹²
- 2.89** The City of Sydney was of the view that the infrastructure types on the existing essential works list are more applicable to greenfield land than urban infill areas and are heavily skewed towards land provision. It said that this makes it 'incredibly challenging in a local government area like

¹⁰⁸ NSW Government, Department of Planning, Industry and Environment, *NSW infrastructure contributions guide* (February 2021), p 7.

¹⁰⁹ NSW Government, Department of Planning and Environment, Practice Note, *Local infrastructure contributions* (January 2019), pp 12 and 14-15.

¹¹⁰ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), pp 20 and 64; Evidence, Mr Achterstraat, 16 July 2021, p 5.

¹¹¹ Evidence, Ms Weatherley, 16 July 2021, p 44.

¹¹² Submission 98, Local Government NSW, p 10.

the City of Sydney, where land is in high demand and land acquisition costs are increasingly prohibitive'. Given this, the City of Sydney suggested that 'urban infill councils with complex infrastructure needs are best placed to determine what is essential infrastructure within their areas'.¹¹³

- 2.90** Minister Stokes provided the committee with the terms of reference for the IPART's review into developing a standardised benchmark of costs for local infrastructure and review of the current essential works list, advising that both are due to report by 31 December 2021. The Minister confirmed that the revised essential works list will be implemented from 1 July 2022.¹¹⁴
- 2.91** In terms of community facilities on the essential works list, Minister Stokes clarified that 'the essential works list includes the cost of land for community facilities but does not include the capital costs of community facility which will not be benchmarked'.¹¹⁵

Affordable housing supply

- 2.92** As per section 7.32 of the EP&A Act, consent authorities (generally councils) have the power to levy contributions for affordable housing, either by monetary payment, dedication of dwellings, or a combination of both.¹¹⁶
- 2.93** In its report, the NSW Productivity Commission acknowledged the important role affordable housing plays, however concluded that 'contributions for affordable housing do not fit within the principles-based model for infrastructure contributions'. The report explained that 'local contributions should be used to fund development-contingent costs; that is costs that would be avoided if a development did not go ahead [and] affordable housing does not fall within this definition'. It therefore recommended that councils be required to report on affordable housing contributions received through section 7.32 and that a review be undertaken into the effectiveness and efficiency of section 7.32 affordable housing contribution programs.¹¹⁷
- 2.94** The NSW Government accepted the recommendations of the NSW Productivity Commission review in relation to affordable housing,¹¹⁸ however it was not clear if this review had commenced and the timeframes for this.¹¹⁹ The proposed Bill makes one change relating to affordable housing by inserting it as part of the regional infrastructure contributions, alongside public amenities or public services, transport infrastructure, regional or state roads, and measures to conserve or enhance the natural environment.¹²⁰

¹¹³ Submission 102, City of Sydney, pp 10-11.

¹¹⁴ Answers to supplementary questions, Minister Stokes, 22 July 2021, pp 17-18; Answers to supplementary questions, Attachment 1, Minister Stokes, 22 July 2021, pp 1-7.

¹¹⁵ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 6.

¹¹⁶ *Environmental Planning and Assessment Act 1979*, s 7.32.

¹¹⁷ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales* (November 2020), pp 81-83.

¹¹⁸ NSW Government, *NSW Productivity Commission's Review of Infrastructure Contributions in NSW – NSW Government Response* (March 2021), p 4.

¹¹⁹ Evidence, Ms Cathy Callaghan, Senior Policy Officer, Shelter NSW, 16 July 2021, p 20.

¹²⁰ Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021, First Print, p 12.

2.95 As noted in chapter 1, the Treasurer in his second reading speech for the Bill said that the infrastructure contributions reforms will 'unlock housing supply faster and more efficiently to make more homes available and more affordable'.¹²¹ However, several stakeholders to this inquiry were unclear how this Bill and the broader reforms will do just that.

2.96 Many indicated that housing supply in New South Wales is at crisis point. For example, Ms Cathy Callaghan, Senior Policy Officer, Shelter NSW, said that 'the demand is huge' and 'there is a substantial gap in affordable housing across the entire State'. She was of the view 'that the private housing market continues to fail a large part of the population' and pointed to research that demonstrated this:

Some research out this week on key workers by the Australian Housing and Urban Research Institute [AHURI] identified that there are no local government areas in the metropolitan region or in Wollongong and Newcastle that have a median house price that is affordable for an early career registered nurse ... The same research says there are only a few LGAs in Sydney where there is even affordable rent for the same early career registered nurses.¹²²

2.97 Likewise, Mr Mark Degotardi, Chief Executive Officer, Community Housing Industry Association NSW, said that 'it goes without saying that we desperately need more affordable housing across the State'. He added that 'this is no longer solely a metropolitan issue', and noted that 'regional housing markets are now at crisis point'.¹²³ In its submission, the Community Housing Industry Association NSW also highlighted that pre-COVID-19 modelling indicated that 'across the State, an additional 317,000 social and affordable rental housing properties are needed by 2036 to meet current and future demand'.¹²⁴

2.98 Ms Conceicao indicated that the undersupply of housing in New South Wales 'was at 100,000 houses five years ago [and] it has not been delivered and we have not caught up'. She highlighted that the current New South Wales planning system does not make it easy for this to occur:

The New South Wales system complemented by the taxing system through infrastructure contributions or a range of other taxes coupled with one of the slowest planning systems in the country, if not the slowest planning system in the country, punitively means that it becomes less and less of a viable investment here in New South Wales. The system as it stands is complex and messy ... Is this getting simpler? The fact of the matter is the way the system sits at the moment, not only is it not simple, it is also not clear both to the investor and the person seeking to create this land supply and to deliver the houses that we so desperately need.¹²⁵

2.99 Mr Forrest also commented on 'the comparatively high cumulative impact of fees, taxes and charges at local, state and federal levels applied to developments in New South Wales compared to the other states and the impact that therefore has on the end price of housing once it goes to market'.¹²⁶

¹²¹ *Hansard*, NSW Legislative Assembly, 22 June 2021, p 11 (Dominic Perrotet).

¹²² Evidence, Ms Callaghan, 16 July 2021, pp 19, 21 and 24.

¹²³ Evidence, Mr Mark Degotardi, Chief Executive Officer, Community Housing Industry Association NSW, 16 July 2021, p 43.

¹²⁴ Submission 145, Community Housing Industry Association NSW, p 1.

¹²⁵ Evidence, Ms Conceicao, 16 July 2021, pp 48-49.

¹²⁶ Evidence, Mr Forrest, 16 July 2021, p 35.

2.100 Further, Mr Forrest noted his support for government expenditure to assist in affordable and social housing, commenting that it is absolutely necessary to correct market failure, however he argued that the current housing supply crisis is due to the government's decision to tighten housing approvals:

... But let us be clear here: Government has created this market failure, in our view, by limiting the amount of housing approvals. There was significant housing supply when there were large numbers of housing approvals. When the Government started to constrain the number of housing approvals, that intervention, or that non-performance of government function, created the problem that we are seeing with escalating house prices now. It seems to us ironic, and the Productivity Commissioner agreed with this, that then you are seeking to add an additional tax to the people who are trying to solve the problem—the producers of new housing—in order to solve a problem that Government created. That just is wrong.¹²⁷

2.101 The Urban Taskforce Australia recommended that 'the Committee call on the Government to support the Productivity Commission by funding affordable housing from consolidated revenue and not inflicting a tax on new home buyers who, themselves, can least afford to pay it'.¹²⁸

2.102 The Property Council of Australia also agreed with the Productivity Commissioner's assessment and did not support the inclusion of affordable housing within a Regional Infrastructure Contribution until a future review of the efficiency and effectiveness of the section 7.32 mechanism has occurred'.¹²⁹

2.103 However, the Community Housing Industry Association NSW and Shelter NSW held differing views.

2.104 Mr Degotardi highlighted the importance of affordable housing being recognised as critical infrastructure and supported the inclusion of affordable housing in the regional infrastructure contributions scheme:

Our sector recognises the benefit of a clear and a consistent contribution system that funds essential infrastructure. But, to us, it is important that any discussion about infrastructure and how it is funded must also include the consideration of social and affordable housing as that critical infrastructure, alongside transport, open space and other community facilities. Secure and affordable housing is at the core of livable, functioning communities and it needs to be planned as a priority, not as an afterthought ... We were encouraged to see that the Bill retains the ability of local councils to secure contributions towards that affordable housing. We also welcome the classification of affordable housing as infrastructure which could be funded through the regional infrastructure contribution system.¹³⁰

2.105 However, Mr Degotardi said it was still not clear under the Bill as to how affordable housing contributions will be raised, and the cost of these contributions.¹³¹

¹²⁷ Evidence, Mr Forrest, 16 July 2021, p 39.

¹²⁸ Submission 121, Urban Taskforce, p 3.

¹²⁹ Submission 96, Property Council of Australia, pp 5-6.

¹³⁰ Evidence, Mr Degotardi, 16 July 2021, p 43.

¹³¹ Evidence, Mr Degotardi, 16 July 2021, p 47.

- 2.106** Ms Callaghan from Shelter NSW highlighted that whilst the Bill does not change the current powers and processes for the levying of development to support affordable housing, they were very concerned that the NSW Productivity Commission report 'has made a point of principle that affordable rental housing contributions do not belong in the future system'. Ms Callaghan noted the review of affordable housing contributions under the current section 7.32, however questioned the direction this was taking and sought further details about this review and whether the Bill could proceed without this being clarified.¹³²
- 2.107** When questioned as to whether in his opinion the reforms will drive down housing prices or make housing more affordable, Dr Murray said that in his view it 'is not going to result in any changes to affordability or changes to the rate of supply', and was more about providing a fairer way to raise revenue.¹³³
- 2.108** At the hearing, Minister Stokes commented on the aim of the reforms to increase housing supply. The Minister said that fundamentally increasing housing supply is a big part of what this is all about. He commented that 'it is not just increasing housing supply for the hell of it; it is about ensuring that we can increase housing supply in the right areas and for it to be supported by the infrastructure it requires'.¹³⁴
- 2.109** Further, Minister Stokes pointed the committee to the modelling conducted by the Centre for International Economics which recognised 'that there are many factors influencing house prices but that the combined direct and indirect impacts of the reforms would lead to a reduction in house prices, particularly in metropolitan Sydney'. The Minister added that the Centre for International Economics noted that 'this impact depends on a number of factors, including councils making use of their improved financial incentives and, as a result, is likely to occur gradually over time'.¹³⁵

Proposed amendments to the Bill

- 2.110** Urban Taskforce Australia was one of the key stakeholders who put forward some drafting amendments specifically on the Bill, recommending that they be considered by the government to improve the efficacy and the outcomes arising from the Bill.¹³⁶
- 2.111** At the hearing, Mr Gadiel indicated that 'there appears to be a divergence' between the government's intent and what has actually been written in the Bill. Mr Gadiel was of the view that 'this has come about as a result of clumsy drafting', but that it was absolutely critical that this drafting be rectified before the legislation is seriously considered and passed by Parliament.¹³⁷

¹³² Evidence, Ms Callaghan, 16 July 2021, p 19.

¹³³ Evidence, Dr Murray, 16 July 2021, p 27.

¹³⁴ Evidence, Minister Stokes, 16 July 2021, p 58.

¹³⁵ Answers to supplementary questions, Minister Stokes, 22 July 2021, p 17.

¹³⁶ Evidence, Mr Forrest, 16 July 2021, p 36.

¹³⁷ Evidence, Mr Gadiel, 16 July 2021, pp 36-37.

- 2.112** At the hearing, Mr Gadiel explained to the committee in detail the impacts of the Bill as it had currently been written and the concerns they had with it.¹³⁸ In its submission, Urban Taskforce Australia also made a number of recommendations and provided a list of legislative amendments to be made to the Bill.¹³⁹
- 2.113** Appearing later in the hearing, Minister Stokes told the committee that he had spoken to Mr Gadiel from Urban Taskforce Australia following his evidence to the committee and that they were going to look specifically at the issues Mr Gadiel raised in terms of the drafting of the Bill.¹⁴⁰

Committee comments

- 2.114** It is evident to the committee that stakeholders generally supported the broader reforms to the infrastructure contributions system, as set out in the NSW Productivity Commission's report. However, the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 lacks the detail that is needed to understand how this would be implemented. This was a major concern for stakeholders during the inquiry, who called for the draft directions and regulations that correspond to the Bill to be released prior to it passing Parliament.
- 2.115** There was much confusion amongst stakeholders as to how the Bill would impact them. Local councils told the committee that they would significantly lose money over time under the reforms. By contrast, the NSW Productivity Commissioner said that in fact local councils will gain money over time. The committee is also unsure whether developers will be making more of a contribution to infrastructure under the reforms or whether some of that existing burden will be shifted to landowners. The lack of any common ground on such basic issues highlights the difficulty for the committee in evaluating the legislation while key details that will drive the new system are missing.
- 2.116** It is also not currently clear how the reforms will increase affordable housing supply. There is no detail on this in the legislation or in the evidence received by the committee. To the extent the evidence did touch on this issue specifically it was that the new regime would not increase housing supply or improve affordability, just move costs between developers and land owners. There was also no evidence before the committee on the amount of new supply that would be needed to reduce housing prices in Sydney or more generally.
- 2.117** While it was put by Mr Ray that some \$3.7 billion in existing funds collected for infrastructure by councils had not been spent (see paragraph 2.72), the committee has no further details as to why this has occurred (if in fact it has) or what have been the policy or legislative barriers to the funds being applied in a more timely way. This information is important to any redesign of the infrastructure contributions arrangements for New South Wales.
- 2.118** The committee also refers to paragraph 2.28 where the Minister did not address a key concern expressed by the local government sector about the delay in infrastructure payments; namely, that this would create a situation where the delivery of local infrastructure would be delayed

¹³⁸ Evidence, Mr Gadiel, 16 July 2021, pp 36-37.

¹³⁹ Submission 121, Urban Taskforce Australia, pp 10-13.

¹⁴⁰ Evidence, Minister Stokes, 16 July 2021, p 60.

until well after it was needed. This is already a key difficulty with the current situation, which would be exacerbated by this change. Councils are generally reluctant to borrow to forward fund infrastructure, and an intent of the contributions and rates reforms are to better incentivise this. Forward funding may also allow some development to take place which wouldn't take place at all if early payment is a barrier to investment. While some councils could borrow against the expected payments, this would simply transfer the cost of servicing that debt from developers to local residents. However, not all councils have the financial capacity to do this. Even where they do, the cost of repayment could well impact the financial of other council services or infrastructure.

- 2.119** Also missing from the proposed legislation were any measures to provide transparency in the collection and expenditure of regional infrastructure fund arrangements.
- 2.120** As discussed above, there are also a number of elements that link in with the Bill and the broader reforms which are still outstanding. These include stakeholder consultation on the Bill's draft regulations and the reviews on the rate pegging system, benchmarking and the essential works list, all due to be completed by the end of 2021. There seems to be consensus concern around the fact that these reviews and consultations have not taken place prior to the Bill being introduced and we see no justification as to why the Bill could not be introduced after this occurs.
- 2.121** The committee agrees with stakeholders that it is very difficult to assess what the overall reforms will look like without the detail behind the Bill. We acknowledge that these are large reforms that will impact many stakeholders across the planning system, and given we do not have a strong sense as to how this will be implemented and what the benefits will be, we are unable to fully support the passage of the Bill at this time.
- 2.122** The committee therefore recommends that the Bill not proceed, until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.

Recommendation 1

That the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 not proceed, until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.

Appendix 1 Submissions

No.	Author
1	Mr Sam Aloï
2	Mr Nikolaos Maropoulos
2a	Mr Nikolaos Maropoulos
3	Mrs Patrizia De Lellis
4	Mr Michael McGrath
5	Name suppressed
6	Name suppressed
7	Confidential
8	Name suppressed
9	Mrs Maria Zucco
10	Mr Alek Manevski
11	Name suppressed
12	Mr Giuseppe Musico
13	Mrs Brenda Santa Maria
14	Confidential
15	Mr Jay Ellison
16	Name suppressed
17	Name suppressed
18	Name suppressed
19	Confidential
20	Mrs Teresa Aloï
21	Name suppressed
22	Name suppressed
23	Name suppressed
23a	Name suppressed
24	Name suppressed
25	Name suppressed
26	Mrs Marie Hodder
27	Name suppressed
28	Mr Brad O'Hara
29	Mr Domenic Pascuzzi

No.	Author
30	Name suppressed
31	Mr Jacob Farrugia
32	Confidential
33	Name suppressed
34	Ms Monika Muscara
35	Name suppressed
36	Name suppressed
37	Name suppressed
38	Name suppressed
39	Name suppressed
40	Name suppressed
41	Name suppressed
42	Name suppressed
43	Name suppressed
44	Name suppressed
45	Mr Johan Najdek
46	Name suppressed
47	Name suppressed
48	Name suppressed
49	Mrs Elaine Field
50	Mr Rufus Goldberg
51	Name suppressed
52	Name suppressed
53	Name suppressed
54	Mrs Vera Cranney
55	Mr Joe Herceg
56	Name suppressed
57	Name suppressed
58	Mr Kishore Kumar
59	Mr Andrew Hutcheson
60	Name suppressed
61	Name suppressed
62	Name suppressed
63	Name suppressed
64	Name suppressed

No.	Author
65	Name suppressed
66	Confidential
67	Confidential
68	Name suppressed
69	Name suppressed
70	Name suppressed
71	Name suppressed
72	Name suppressed
73	Name suppressed
74	Name suppressed
75	Sutherland Shire Council
76	Inner West Council
77	Mrs Miriam Boschetti - Zanotti
78	Name suppressed
79	Name suppressed
80	Mrs Nina Mammoliti
81	Mr Terry Bosnjak
82	Bathurst Regional Council
83	Orange City Council
84	Campbelltown City Council
85	The Hills Shire Council
86	Port Macquarie Hastings Council
87	Willoughby City Council
88	LPG Holdings Pty Ltd
89	City of Newcastle
90	Urban Development Institute of Australia NSW (UDIA)
91	NSW Minerals Council
92	Canterbury Bankstown Council
93	Wollondilly Shire Council
94	Murray River Council
95	Business NSW
96	Property Council of Australia
97	Tamworth Regional Council
98	Local Government NSW
99	Northern Sydney Regional Organisation of Councils (NSROC)

No.	Author
99a	Northern Sydney Regional Organisation of Councils (NSROC)
100	Riverina Joint Organisation
101	Central Coast Council
102	City of Sydney
103	Liverpool City Council
104	Housing Industry Association
105	Name suppressed
106	Name suppressed
107	Confidential
108	Name suppressed
109	Name suppressed
110	Name suppressed
111	Name suppressed
112	Confidential
113	Confidential
114	Ms Rose Tilocca
115	Name suppressed
116	Confidential
117	Name suppressed
118	Name suppressed
119	Name suppressed
120	Name suppressed
121	Urban Taskforce
122	Name suppressed
123	Mr Peter Ingall
124	Confidential
125	Name suppressed
126	Name suppressed
127	Mrs Maria Gidaro
128	Mr Anthony Ziino
129	Name suppressed
130	Confidential
131	Name suppressed
132	Name suppressed
133	Name suppressed

No.	Author
134	Name suppressed
135	Name suppressed
136	Confidential
137	Confidential
138	Name suppressed
139	Name suppressed
140	Name suppressed
141	Mr Ryan Harrison
142	The Greens
143	Name suppressed
144	Shellharbour City Council
145	Community Housing Industry Association NSW (CHIA NSW)
146	City of Ryde Council
147	Randwick City Council
148	City of Parramatta Council
149	Woollahra Municipal Council
150	Ku-ring-gai Council
151	Hunters Hill Council
152	NSW Productivity Commissioner
153	Camden Council
154	Hornsby Shire Council
155	Mr Philip and Mrs Mary Powell
156	Bayside Council
157	Lane Cove Council
158	Lake Macquarie City Council
159	United Realty

Appendix 2 Witnesses at hearing

Date	Name	Position and Organisation
Friday 16 July 2021 Parliament House Via videoconference	Mr Peter Achterstraat AO	NSW Productivity Commissioner
	Cr Clover Moore	Lord Mayor, City of Sydney
	Ms Monica Barone	Chief Executive Officer, City of Sydney
	Cr Linda Scott	President, Local Government NSW
	Mr Charles Casuscelli	Chief Executive Officer, Western Sydney Regional Organisation of Councils
	Cr Rick Firman OAM	Chairman, Riverina Joint Organisation
	Mrs Julie Briggs	Chief Executive Officer, Riverina Joint Organisation
	Mr Tony Donoghue PSM	General Manager of Coolamon Shire
	Mr John Engeler	Chief Executive Officer, Shelter NSW
	Ms Cathy Callaghan	Senior Policy Officer, Shelter NSW
	Dr Cameron Murray	Postdoctoral Research Associate, The University of Sydney
	Mr Tom Forrest	Chief Executive Officer, Urban Taskforce Australia
	Mr Aaron Gadiel	Urban Taskforce representative on the Land and Environment Court Users Group and Partner at Mills Oakley
	Mr Mark Degotardi	Chief Executive Officer, Community Housing Industry Association NSW
Mr Michael Carnuccio	Senior Policy Officer, Community Housing Industry Association NSW	
Mr John Brockhoff	Policy Manager, Planning Institute Australia	

Date	Name	Position and Organisation
	Ms Sue Weatherley	Chair, Policy Committee, Planning Institute Australia
	Ms Lauren Conceicao	Acting NSW Executive Director, Property Council of Australia
	Mr Ross Grove	Western Sydney Regional Director, Property Council of Australia
	Hon Rob Stokes MP	Minister for Planning and Public Spaces
	Mr Marcus Ray	Group Deputy Secretary, Planning and Assessment, NSW Department of Planning, Industry and Environment

Appendix 3 Minutes

Minutes no. 57

Friday 16 July 2021

Portfolio Committee No. 7 – Planning and Environment

Jubilee Room and via videoconference, 8.46 am

1. Members present

Ms Faehrmann, *Chair*

Mr Pearson, *Deputy Chair (from 9.02 am)*

Ms Cusack *(from 8.48 am)*

Mr Franklin

Ms Jackson

Mr Latham *(participating, from 8.50 am)*

Mr Mallard *(from 8.56 am)*

Mr Searle

2. Provision of documents to participating member

The committee noted the correspondence from Ms Nella Hall, Assistant to Hon Mark Latham MLC, to Chair, advising that Mr Latham will be participating for the duration of the inquiry into the Environmental Planning and Assessment Bill.

Resolved, on the motion of Mr Searle: That Mr Latham, who has advised the committee that he intends to participate for the duration of the inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021, be provided with copies of inquiry related documents.

3. Draft minutes

Resolved, on the motion of Mr Franklin: That draft minutes nos. 53, 54 and 55 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 June 2021 – Email from Kelda Murray, Distribution Manager, Indievillage to the secretariat, requesting footage of the kangaroos hearings on 11 and 15 June 2021
- 2 July 2021 – Email from Ms Sandra Harris, Director Ministerial Services, Office of the Coordinator-General, requesting an extension to providing post hearing responses following the kangaroos hearings to Friday 23 July 2021
- 6 July 2021 – Email from Ms Rachel Walmsley, Head of Policy & Law Reform, Environmental Defenders Office, to secretariat, advising that they currently do not have capacity to engage in the inquiry into the Environmental Planning and Assessment Bill at this time
- 8 July 2021 – Email from Ms Liz Crosby, Executive Assistant to the CEO, Infrastructure NSW, to secretariat, declining the invitation to attend the hearing for the Environmental Planning and Assessment Bill
- 8 July 2021 – Email from Ms Anna Bacik, Director Policy and Research, NSW Council of Social Service, advising that they currently do not have capacity to engage in the inquiry into the Environmental Planning and Assessment Bill at this time
- 9 July 2021 – Email from Hon Mark Buttigieg MLC, Opposition Whip in the Legislative Council, to secretariat, advising that the Hon Adam Searle MLC will substituting for the Hon Penny Sharpe MLC for the duration of the Environmental Planning and Assessment Bill inquiry

- 12 July 2021 – Email from Mr Jarrad Tulloch, Manager, Government Services, Department of Planning, Industry and Environment, advising that the NSW Government will not be providing a submission to the inquiry into the Environmental Planning and Assessment Bill
- 12 July 2021 – Email from Ms Liz Crosby, Executive Assistant to the CEO, Infrastructure NSW, providing the reasons for declining the invitation to appear at the hearing for the inquiry into the Environmental Planning and Assessment Bill
- 12 July 2021 – Email from Ms Nella Hall, Assistant to Hon Mark Latham MLC, to Chair, advising that Mr Latham will be participating for the duration of the inquiry into the Environmental Planning and Assessment Bill
- 13 July 2021 – Email from Mr David Barrow, Sydney Alliance, to secretariat, declining the invitation to attend the hearing for the Environmental Planning and Assessment Bill as Shelter NSW will speak on their behalf
- 13 July 2021 – Email from an individual, to committee, in relation to a case with the Environmental Protection Authority
- 14 July 2021 – Email from Mr Kit Hale, Office Assistant, Urban Development Institute of Australia (NSW), to secretariat, declining the invitation to attend the hearing for the inquiry into the Environmental Planning and Assessment Bill inquiry
- 14 July 2021 – Email from Mr Marc Stears, Professor and Director, Sydney Policy Lab, to secretariat, declining the invitation to attend the hearing for the Environmental Planning and Assessment Bill as Mr Cameron Murray has already been invited and would be the best contributor from the university
- 15 July 2021 – Email from Mr John Brockhoff, National Policy Manager, Planning Institute Australia, to committee, providing two documents their organisation has prepared and released in relation to the development contributions reform process.

Sent:

- 30 June 2021 – Email to Sandra Harris, Director Ministerial Services, Office of the Coordinator-General, Environment, Energy and Science Group, Department of Planning, Industry and Environment, attaching a summary of concerns raised in evidence to the kangaroo inquiry about the department's kangaroo counting methodology and requesting responses to additional questions by Friday 16 July 2021
- 8 July 2021 – Email to Ms Emma Lowder, Developer Contributions Planner, Lake Macquarie City Council, from secretariat, approving the request for an extension to make a submission to the Environmental Planning Bill inquiry.

Resolved, on the motion of Mr Franklin: That the committee keep the correspondence dated 13 July 2021 from an individual, to committee, in relation to a case with the Environmental Protection Authority, confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information.

5. Inquiry into the Waste Avoidance and Resource Recovery Amendment (Plastics Reduction) Bill 2021

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 93-95.

5.2 Answers to questions on notice

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Consumer Electronics Suppliers Association, received on 8 June 2021
- Environmental Protection Authority, received on 24 June 2021
- NSW Department of Planning, Industry and Environment, received on 24 June 2021
- Ms Karinne Taylor, MRA Consulting, received on 25 June 2021

- Physical Disability Council of NSW, received on 28 June 2021.

5.3 Circulation of Chair's draft report

Resolved, on the motion of Ms Jackson: That the Chair's draft report be circulated to members on Wednesday 4 August 2021.

6. Inquiry into the Health and wellbeing of kangaroos and other macropods in New South Wales

6.1 Answers to questions on notice

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Aunty Ro Mudyin Godwin
- Dr Benjamin Allen

6.2 Request for an extension to provide answers to post hearing questions

The committee noted that it agreed via email to the Department of Planning, Industry and Environment's request for an extension for its post hearing responses from 16 July 2021 to 23 July 2021, due to COVID restrictions and limited staff availability.

6.3 Request for hearing footage

The committee noted that it agreed via email to the request from Indieville that it be provided with all video footage from the 11 and 15 June hearings, for use in a documentary film as a follow up to 'Kangaroo - A love hate story.'

7. Inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021

7.1 Terms of reference

The committee noted that the following terms of reference referred by the House on Thursday 24 June 2021.

That:

- (a) the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report,
- (b) the committee report by 10 August 2021.

7.2 Proposed timeline

Resolved, on the motion of Mr Searle: That the committee adopt the following timeline for the administration of the inquiry:

- 11 July 2021 – closing date for submissions
- 16 July 2021 – hearing
- 3 August 2021 – circulation of chair's draft report
- 5 August 2021 – report deliberative
- 10 August 2021 – report tabling.

7.3 Stakeholder and witness list

Resolved, on the motion of Mr Franklin: That the committee note the stakeholders invited to make a submission and/or appear as a witness at the hearing.

7.4 Advertising

The committee noted that this inquiry was advertised via Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

7.5 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-4, 9, 10, 12, 13, 15, 20, 26, 28, 29, 31, 34, 49, 50, 54, 55, 58, 59, 75-77, 80-104, 114, 121, 123, 127, 128, 141, 142, 144-154.

7.6 Name suppressed submissions

The committee noted that the following submissions were published, except for the authors name, by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 5, 6, 8, 11, 16-18, 21-25, 27, 30, 33, 35-48, 51-53, 56, 57, 60-65, 68-74, 78, 79, 105, 106, 108-111, 115, 117-120, 122, 125, 126, 129, 131-135, 138-140, 143.

Resolved, on the motion of Ms Jackson: That the committee keep the names of submission authors confidential, as per the request of the author, in submission nos. 5, 6, 8, 11, 16-18, 21-25, 27, 30, 33, 35-48, 51-53, 56, 57, 60-65, 68-74, 78, 79, 105, 106, 108-111, 115, 117-120, 122, 125, 126, 129, 131-135, 138-140, 143.

7.7 Pro forma documents

The committee noted that it has received two pro forma type documents, pro forma A from 22 authors and pro forma B from 10 authors.

Resolved, on the motion of Ms Jackson: That the committee publish one copy of pro form A and one copy of pro forma B on the 'Other Documents' tab on the inquiry webpage, noting the number of individuals who submitted these same documents and keeping the names and contact details of these individuals confidential.

7.8 Declined witnesses

The committee noted that the following witnesses have declined the invitation to appear at the hearing for various reasons or the secretariat was not able to make contact with them from repeated attempts:

- Better Planning Network (contact not able to be made)
- Sydney Alliance
- Total Environment Centre (contact not able to be made)
- NCOSS
- Environmental Defenders Office
- Sydney Policy Lab
- Lindsay Taylor Lawyers
- The Urban Development Institute of Australia
- Infrastructure NSW
- Illawarra Shoalhaven Joint Organisation of Councils.

7.9 Post-hearing responses

Resolved, on the motion of Mr Pearson: That:

- witnesses be given to COB Wednesday 21 July 2021 to provide answers to any questions taken on notice
- the provision for supplementary questions be available only to the NSW Productivity Commissioner, the Minister for Planning and Public Spaces and the NSW Department of Planning, Industry and Environment, and that members provide any supplementary questions to the secretariat by 10.00 am Monday 19 July 2021, and that these be circulated to members with comments due by 12.00 pm Monday 19 July 2021.

Resolved, on the motion of Mr Pearson: That transcript corrections and clarifications to evidence be provided within 48 hours of the receipt of the transcript by the witness.

7.10 Allocation of questioning

The committee noted that the resolution appointing the committee provides that 'the sequence of questions to be asked at hearings is to alternate between opposition, crossbench and government members, in that order, with equal time allocated to each'.

7.11 Virtual hearing proceedings

The Chair briefed members on the proceedings of the day, including:

- turning off microphone if not speaking to remove background noise
- the Chair may mute you if there is background noise or feedback disrupting the hearing
- be mindful of your background given it will be visible on the webcast
- try to avoid talking at the same time
- be clear on what witness your questions are directed to, or what witness should respond first
- it is important that members stay connected even during the breaks
- there is a time lag when people enter and leave the lobby and when coming on and off mute
- be patient if we experience any technical difficulties, please refer to the guide (*attached*).

7.12 Virtual public hearing

Witnesses were admitted into the virtual hearing and the committee began broadcasting proceedings.

The Chair made an opening statement regarding the virtual hearing proceedings and other matters.

The following witness was sworn and examined:

- Mr Peter Achterstraat AO, NSW Productivity Commissioner.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Cr Clover Moore, Lord Mayor, City of Sydney
- Ms Monica Barone, Chief Executive Officer, City of Sydney
- Cr Linda Scott, President, Local Government NSW
- Mr Charles Casuscelli, Chief Executive Officer, Western Sydney Regional Organisation of Councils
- Cr Rick Firman OAM, Chairman, Riverina Joint Organisation
- Mrs Julie Briggs, Chief Executive Officer, Riverina Joint Organisation
- Mr Tony Donoghue PSM, General Manager of Coolamon Shire.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Engeler, Chief Executive Officer, Shelter NSW
- Ms Cathy Callaghan, Senior Policy Officer, Shelter NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Cameron Murray, Postdoctoral Research Associate, The University of Sydney.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Tom Forrest, Chief Executive Officer, Urban Taskforce Australia
- Mr Aaron Gadiel, Urban Taskforce representative on the Land & Environment Court Users Group and Partner at Mills Oakley.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mark Degotardi, Chief Executive Officer, Community Housing Industry Association NSW

- Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW
- Mr John Brockhoff, Policy Manager, Planning Institute Australia
- Ms Sue Weatherley, Chair, Policy Committee, Planning Institute Australia
- Ms Lauren Conceicao, Acting NSW Executive Director, Property Council of Australia
- Mr Ross Grove, Western Sydney Regional Director, Property Council of Australia.

The evidence concluded and the witnesses withdrew.

The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

The Hon Rob Stokes MP, Minister for Planning and Public Spaces, was admitted.

The following witnesses were sworn:

- Mr Marcus Ray, Group Deputy Secretary, Planning & Assessment, NSW Department of Planning, Industry and Environment.

The public and the media withdrew. The public virtual hearing concluded at 5.18 pm.

8. Adjournment

The committee adjourned at 5.18 pm, until 9.30 am Wednesday 21 July 2021 (report deliberative for the rationale for, and impacts of, new dams and other water infrastructure in NSW).

Sarah Dunn

Committee Clerk

Draft minutes no. 59

Thursday 5 August 2021

Portfolio Committee No. 7 – Planning and Environment

Via videoconference, 1.32 pm

1. Members present

Ms Faehrmann, *Chair*
Mr Pearson, *Deputy Chair*
Ms Cusack
Mr Franklin
Ms Jackson
Mr Latham (*participating*)
Mr Mallard
Mr Searle

2. Draft minutes

Resolved, on the motion of Mr Pearson: That draft minutes nos. 56, 57 and 58 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 23 July 2021 – Email from Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment, to secretariat, providing a clarification to the transcript of 16 July 2021.

5. Inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021

5.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 99a, 155, 156, 157, 158, 159.

5.2 Confidential submissions

Resolved, on the motion of Mr Searle: That the committee keep submission nos. 7, 14, 19, 32, 66, 67, 107, 112, 113, 116, 124, 130, 136, 137 confidential, as per the request of the author.

5.3 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to supplementary questions from Hon Rob Stokes MP, Minister for Planning and Public Spaces, received 22 July 2021
- answers to supplementary questions from NSW Productivity Commissioner, received 22 July 2021
- attachments to supplementary questions from NSW Productivity Commission, received 23 July 2021
- answers to supplementary questions from the Department of Planning, Industry and Environment, received 22 July 2021
- answers to a question on notice from Sydney Lord Mayor Clover Moore, received on 19 July 2021.

5.4 Transcript clarification

The committee noted the correspondence from Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment, providing a clarification to the transcript of 16 July 2021.

Resolved, on the motion of Mr Franklin: That a footnote be included in the transcript of 16 July 2021 noting the clarification received by Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment.

5.5 Recording the deliberative meeting

Resolved, on the motion of Mr Pearson: That the meeting be recorded through WebEx for the purposes of the secretariat cross-checking amendments following the meeting only, with the recording deleted after this use.

5.6 Consideration of Chair's draft report

The Chair submitted their draft report entitled *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Searle: That paragraph 1.19 be amended by:

- a) inserting 'NSW Government intends for the' before 'new infrastructure contributions'
- b) omitting 'is expected' before 'to be implemented'.

Chapter 2

Mr Franklin moved: That the following new paragraph be inserted after paragraph 2.62:

'It should be noted that the City of Sydney's estimated losses, as explained in the Lord Mayor's answers to questions on notice, compares unlike scenarios, by contrasting an estimated maximum local contribution of \$20,000 under section 7.11 contributions to the NSW Productivity Commissioner's recommendation of approximately \$8,000-\$10,000 per dwelling under section 7.12 contributions. The determination of essential works is subject to an independent review underway by the IPART, which will consider the essential infrastructure needs of growth areas where infrastructure is funded by a section 7.11 contributions plan.'

Mr Searle moved: That the motion of Mr Franklin be amended by omitting 'unlike scenarios, by contrasting' before 'an estimated maximum local contribution'.

Amendment of Mr Searle put and passed.

Original question of Mr Franklin, as amended, put and passed.

Mr Searle moved: That paragraph 2.114 be amended by omitting: 'It is also not clear how the reforms will increase affordable housing supply, despite the promises of the Minister.' and inserting instead:

'The lack of any common ground on such basic issues highlights the difficulty for the committee in evaluating the legislation while key details that will drive the new system are missing.

It is also not currently clear how the reforms will increase affordable housing supply. There is no detail on this in the legislation or in the evidence received by the committee. To the extent the evidence did touch on this issue specifically it was that the new regime would not increase housing supply or improve affordability, just move costs between developers and land owners. There was also no evidence before the committee on the amount of new supply that would be needed to reduce housing prices in Sydney or more generally.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Pearson, Mr Searle.

Noes: Ms Cusack, Mr Franklin, Mr Mallard.

Question resolved in the affirmative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 2.114:

'While it was put by Mr Ray that some \$3.7 billion in existing funds collected for infrastructure by councils had not been spent (see paragraph 2.71), the committee has no further details as to why this has occurred (if in fact it has) or what have been the policy or legislative barriers to the funds being applied in a more timely way. This information is important to any redesign of the infrastructure contributions arrangements for New South Wales.'

Question put.

The committee divided.

Ayes: Ms Faehrmann, Ms Jackson, Mr Pearson, Mr Searle.

Noes: Ms Cusack, Mr Franklin, Mr Mallard.

Question resolved in the affirmative.

Mr Searle moved: That the following new paragraph be inserted after paragraph 2.114:

'The committee also refers to paragraph 2.28 where the Minister did not address a key concern expressed by the local government sector about the delay in infrastructure payments; namely, that this would create a situation where the delivery of local infrastructure would be delayed until well after it was needed. This is already a key difficulty with the current situation, which would be exacerbated by this change. While some councils could borrow against the expected payments, this would simply transfer the cost of servicing that debt from developers to local residents. However, not all councils have the financial capacity to do this. Even where they do, the cost of repayment could well impact the financial of other council services or infrastructure.'

Mr Franklin moved: That the motion of Mr Searle be amended by inserting 'Councils are generally reluctant to borrow to forward fund infrastructure, and an intent of the contributions and rates reforms are to better incentivise this. Forward funding may also allow some development to take place which wouldn't take place at all if early payment is a barrier to investment.' before 'While some councils could borrow'.

Amendment of Mr Franklin put and passed.

Original question of Mr Searle, as amended, put and passed.

Resolved, on the motion of Mr Searle: That the following new paragraph be inserted after paragraph 2.114:

'Also missing from the proposed legislation were any measures to provide transparency in the collection and expenditure of regional infrastructure fund arrangements.'

Resolved, on the motion of Mr Searle: That paragraph 2.115 be amended by omitting 'The committee notes that there' and inserting instead 'As discussed above, there'.

Resolved, on the motion of Mr Franklin: That Recommendation 1 be amended by inserting at the end: 'by the Independent Pricing and Regulatory Tribunal'.

Resolved, on the motion of Mr Pearson: That:

The draft report as amended be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, pro forma documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, pro forma documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The secretariat is tabling the report at 10.00 am on Tuesday 10 August 2021;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

6. Adjournment

The committee adjourned at 2.04 pm, *sine die*.

Sarah Dunn
Committee Clerk

