

**Environmental Planning and Assessment Amendment
(Housing and Productivity Contributions) Bill 2023 Hearing**

TREASURY

Thursday, 8 June 2023

QUESTIONS ON NOTICE

Questions on Notice – NSW Treasury

QoN #	Transcript Page	QUESTION	RESPONSE
1	43	The Hon. SCOTT FARLOW MLC: Could we be provided with a report card in terms of the implementation of the Productivity Commissioner's reports recommendations?	Please see attachment A.
2	44	The Hon. MARK BUTTIGIEG: On that point, does Treasury have any stats on the proportion of the industry that is self-funding? MICHAEL GADIEL: I don't have them to hand. We can take it on notice and see if we can provide an answer but it's not with us today.	Treasury is not aware of any publicly available information on the funding or financing arrangements of the development industry.
3	47	The Hon. ANTHONY D'ADAM: Earlier in the proceedings it was put that it might be a perverse irony if the funds that are collected in the SBC Fund were then invested in a way that was harmful for the environment. I note provision 7.31 (8) says that the Minister manages the SBC Fund in accordance with part 6 of the Government Sector Finance Act. Are there any specific protections or provisions in terms of how the funds will be managed to ensure that that situation doesn't occur? CASS WILKINSON: The investment strategy for the fund is not settled yet. The Treasurer will need to approve that at some point. As you may have noticed, during estimates most years we get questions about the ethical components of the State's investment strategy. We'll be happy to take on notice seeking some further information	The Bill authorises (but does not require) money held within the HAP or SBC Fund to be invested pursuant to the requirements of the <i>Government Sector Finance Act</i> . It has not yet been determined if, or how, either Fund will be invested. It is foreseeable some money held within both Funds will be held as cash and some invested via TCorp to avoid the erosion of value over time by inflation. TCorp has had an Investment Stewardship approach in place since 2015 which guides its investment approach and decision-making. This Investment Stewardship approach is available on TCorp's website at this link: New South Wales Treasury Corporation - Investment Stewardship (nsw.gov.au) .

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		<p>for you about what's planned. Currently, at the moment, the specific investment strategy hasn't been settled for the fund, so we'll have to get some more information for you.</p>	<p>In 2022, Treasury engaged Ms Pru Bennett to undertake a review to identify opportunities to enhance TCorp's ESG investment practices drawing on leading practice.</p> <p>This independent review considered:</p> <ul style="list-style-type: none"> • TCorp's current investment stewardship practices, including the incorporation of Environmental, Social and Governance (ESG) considerations into investment decisions • How TCorp's approaches compare to domestic and global peers • Areas for further improvement so that TCorp is adopting leading practice. <p>The Review made several recommendations that are currently being implemented by TCorp.</p> <p>The Review and the previous government's response are publicly available on Treasury's website at this link: Environmental, Social and Governance Review NSW Treasury.</p>										
4	50	<p>The Hon. SCOTT FARLOW: So what are you booking per annum each financial year in the budget estimates on this new charge? MATT GREISS: If you give me a moment, I will find that for you.</p> <p>MICHAEL GADIEL: Matt is the right person to answer this question, but we haven't updated since the PEBU. So at the moment the PEBU profile is the profile for the expected charges.</p> <p>The Hon. SCOTT FARLOW: But there are changes to that, because that did apply on knockdown rebuilds and that</p>	<p>The NSW Budget currently includes the following revenue estimates relating to the HAP reforms.</p> <p>These forecasts will be updated for Budget and are subject to change based on economic conditions and the final form of the Bill.</p> <table border="1" data-bbox="1199 1297 1913 1390"> <thead> <tr> <th>\$ million</th> <th>2023-24</th> <th>2024-25</th> <th>2025-26</th> <th>2026-27</th> </tr> </thead> <tbody> <tr> <td>Revenue</td> <td>176.56</td> <td>319.74</td> <td>427.86</td> <td>476.87</td> </tr> </tbody> </table>	\$ million	2023-24	2024-25	2025-26	2026-27	Revenue	176.56	319.74	427.86	476.87
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		<p>did apply on intensifications with granny flats and the like, didn't it?</p> <p>MICHAEL GADIEL: I don't think it applied. I'd have to take it on notice, but my understanding is it didn't apply to knockdown rebuilds. But we do have late implementation. So I think the assumption in the PEBU was a September implementation date.</p> <p>CASS WILKINSON: Really, the PEBU figure had to necessarily make some assumptions about the timing of the bill being passed and whether or not there may be amendments on the way through.</p> <p>The Hon. SCOTT FARLOW: So essentially there have been no updates since then.</p> <p>MICHAEL GADIEL: No, there has been no update since then, although we would update it again at budget time.</p> <p>The Hon. SCOTT FARLOW: If we could have the numbers on that, that would be great, even if you could take them on notice.</p> <p>CASS WILKINSON: I was going to say, we might take it on notice so as not to hold you up.</p> <p>The Hon. SCOTT FARLOW: That's fine.</p>	<p>The reforms proposed by the previous government and explanatory information provided to Parliament in relation to the 2021 Infrastructure Contributions Bill proposed applying contributions to knock-down/rebuild developments.</p> <p>Under the policy proposed by the Government, knock-down/rebuilds will be exempt from Housing and Productivity Contributions. This type of development does not, on average, impose an additional infrastructure burden.</p> <p>Neither the 2021 model nor the current policy proposed that contributions would be applied to secondary dwellings ('granny flats').</p>

ATTACHMENT - REFORM OF INFRASTRUCTURE CONTRIBUTIONS IN NEW SOUTH WALES –STATUS UPDATE REPORT

Outlined below is the status of each of the 29 recommendations of the NSW Productivity Commissioner’s *Review of Infrastructure Contributions in New South Wales* [the Review] as of June 2023.

Recommendation			Status
2.1	Enhance efficiency of the infrastructure contributions system	Implement reform to deliver an efficient infrastructure contributions system so: <ul style="list-style-type: none"> ▪ local contributions are cost-reflective charges on impactors, applied through a consistent framework but with flexibility for adaptation to local circumstances ▪ state contributions are simple and certain charges on impactors and beneficiaries of State service delivery. 	The recommendations contained in the 2020 Productivity Commissioner Review reflected economically efficient principles to give New South Wales a best practice system of infrastructure funding. The efficiency of the developer contributions system will be enhanced by implementation of most of the Review’s 29 recommendations, as is currently proposed.
3.1	Allow councils’ general income to increase with population	Subject to review by the Independent Pricing and Regulatory Tribunal, reform the local government rate peg to allow councils’ general income to increase with population.	Implemented as of 1 July 2022
4.1	Develop infrastructure contributions plans upfront as part of the zoning process	Amend legislation to require: <ul style="list-style-type: none"> ▪ where land is being rezoned, the draft infrastructure contributions plan must be publicly exhibited at the same time as the planning proposal ▪ adoption of the infrastructure contributions plan before any determination is made on a development application. 	Implementation underway
4.2	Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition	i. Amend legislation to introduce a direct land contribution mechanism to: <ul style="list-style-type: none"> ▪ apply a statutory charge on the land at the time of rezoning that requires a land contribution be made ▪ require the contribution on sale of the land, or subdivision development application, whichever comes first ▪ allow the contribution to be satisfied as a monetary payment, or dedication of land. ii. Consult with key stakeholders from councils and industry in the design and implementation of a direct land contribution mechanism.	Implementation not progressing
4.3	Issue advice for land valuation to improve consistency and accuracy	Develop a practice note, in consultation with the Valuer General, to guide land valuation, including assumptions and methodology, particularly for land that is yet to be rezoned and may be constrained.	Implementation underway
4.4	Index land contribution amounts to changing land values	i. The Valuer General prepare a methodology and publish appropriate land value indices. ii. Amend legislation to require new contributions plans to separately identify and escalate land contribution amounts by the appropriate index. iii. The Minister to direct councils to separately identify and escalate land contribution amounts by the appropriate index when reviewing contributions plans.	Implementation not progressing
4.5	Contributions plans use benchmarked costs	Independent Pricing and Regulatory Tribunal to develop and maintain standardised benchmark costs for local infrastructure that reflect the efficient cost of provision.	Implementation underway
4.6	Local contributions plans reflect development-contingent costs	i. Apply the essential works list to all section 7.11 contributions plans. ii. Independent Pricing and Regulatory Tribunal to review the essential works list and provide advice on the approach to considering efficient infrastructure design and application of nexus. iii. Subject to review by the Independent Pricing and Regulatory Tribunal, issue a revised practice note.	Implementation not progressing
4.7	Independent Pricing and Regulatory Tribunal review of contributions plans be ‘by exception’ and based on efficient costs	i. Remove the monetary trigger for review of contributions plans by the Independent Pricing and Regulatory Tribunal. ii. Develop Terms of Reference for the Independent Pricing and Regulatory Tribunal to review any costs in a section 7.11 contributions plan on a ‘by exception’ basis with the option of a ‘targeted’ review of specific sections of a plan. iii. Prepare a practice note to reflect the ‘by exception’ review process and requirements for local contributions plans.	Implementation not progressing
4.8	Contributions plans are prepared using standard online templates and digital tools	i. Develop standard online contributions plan templates for section 7.11 local contributions and section 7.12 fixed levies.	Implementation underway <ul style="list-style-type: none"> • Department of Planning and Environment is progressing as a practice note – no legislation is currently proposed.

Recommendation		Status
	<p>ii. Amend legislation to require new contributions plans be made using standard templates and housed within the contributions digital tool to be developed on the NSW Planning Portal.</p> <p>iii. Require contributions plans transition to the digital tool upon review.</p>	
4.9	<p>Encourage councils to forward fund infrastructure, through borrowing and pooling of funds</p> <p>i. Amend legislation to allow:</p> <ul style="list-style-type: none"> ▪ pooling of contributions funds as the default option ▪ interest costs associated with borrowing for infrastructure be collected through contributions plans. <p>ii. Incentivise councils to borrow to forward fund infrastructure, including by:</p> <ul style="list-style-type: none"> ▪ Treasury Corporation reviewing their lending criteria to consider allowing capital grants and contributions (including infrastructure contributions) to be included in debt serviceability calculations where contributions relate specifically to the project for which council is seeking funding ▪ establishing a program to provide an additional financial incentive when councils borrow to build infrastructure. 	<p>Implementation underway</p> <ul style="list-style-type: none"> • Department of Planning and Environment is progressing as a practice note – no legislation is currently proposed.
4.10	<p>Defer payment of contributions to the occupation certificate stage</p> <p>i. Extend permanently the Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020 that was introduced as a temporary measure in response to the COVID-19 pandemic.</p> <p>ii. Design the NSW Planning Portal so that the release of occupation certificates is contingent upon payment of infrastructure contributions.</p> <p>iii. Increase oversight of private certifiers by requiring that the certifying authority must confirm payment of contributions before issuing an occupation certificate.</p> <p>iv. Amend legislation to create an offence should certifiers issue a certificate without an infrastructure contribution payment.</p>	<p>Implementation not progressing</p>
4.11	<p>Increase the maximum allowable rate for section 7.12 fixed development consent levies</p> <p>i. Amend the maximum rate for section 7.12 contributions as follows:</p> <ul style="list-style-type: none"> ▪ \$10,000 per additional dwelling for houses (detached, semi-detached, townhouses) ▪ \$8,000 per additional dwelling for all other residential accommodation ▪ \$35 per square metre of additional gross floor area for commercial uses ▪ \$25 per square metre of additional gross floor area for retail uses ▪ \$13 per square metre of additional gross floor area for industrial uses. <p>ii. Index contribution rates quarterly using the Producer Price Index (Road and Bridge Construction – New South Wales) and review periodically (approximately every three to five years) to ensure they remain in line with the intended proportion of development costs.</p>	<p>Implementation not progressing</p>
4.12	<p>Planning agreements consistent with the principles-based approach</p> <p>i. Adopt the Draft Planning Agreements Practice Note 2020 and EP&A Regulation amendments exhibited by the Department in April 2020 to provide immediate improvements to the operation of planning agreements.</p> <p>ii. Amend the practice note to embed the principles of the contributions system so that planning agreements are:</p> <ul style="list-style-type: none"> ▪ for the delivery of infrastructure to support development that is out-of-sequence or unexpected, or ▪ to facilitate the direct delivery of development-contingent infrastructure or impact mitigation works. <p>iii. Amend the legislation to require planning authorities to:</p> <ul style="list-style-type: none"> ▪ register planning agreements and draft planning agreements in a centralised system, contained within the NSW Planning Portal ▪ ‘publicly exhibit’ rather than ‘publicly notify’ planning agreements, including requirements to receive and consider public submissions. 	<p>Implementation underway</p> <ul style="list-style-type: none"> • Department of Planning and Environment is progressing as a practice note – no legislation is currently proposed.
4.13	<p>Publish guidelines for planning agreements for mining and energy related projects consistent with the principles-based approach</p> <p>Publish a guideline for mining and energy related projects consistent with the principles-based approach, so that planning agreements primarily relate to direct delivery of development-contingent infrastructure.</p>	<p>Implementation underway</p>
4.14	<p>Improve accountability for affordable housing contributions</p> <p>i. Require affordable housing contributions received through section 7.32 contribution mechanisms and planning agreements be reported by councils, including:</p>	<p>Implementation underway</p>

Recommendation		Status
	<ul style="list-style-type: none"> ▪ the amount of monetary contributions received ▪ the value and location of any in-kind provision, both works and land ▪ expenditure of monetary contributions ▪ transfer and management of assets. <p>ii. Undertake a future evaluation of section 7.32 affordable housing contribution programs to determine their effectiveness and efficiency.</p>	
5.1	<p>Adopt regional infrastructure contributions</p> <p>i. Prepare and implement state contributions for Greater Sydney, Central Coast, Hunter, and Illawarra-Shoalhaven regions.</p> <p>ii. Greater Sydney region charges (subject to no substantial impacts on feasibility) as follows:</p> <ul style="list-style-type: none"> ▪ \$12,000 per dwelling for houses (detached, semi-detached, townhouses) ▪ \$10,000 per dwelling for all other residential accommodation ▪ \$10 to \$15 per square metre for industrial ▪ \$20 to \$30 per square metre for commercial ▪ \$30 to \$40 per square metre for mixed uses. <p>iii. Central Coast, Hunter and Illawarra-Shoalhaven region charges (subject to no substantial impacts on feasibility) as follows:</p> <ul style="list-style-type: none"> ▪ \$10,000 per dwelling for houses (detached, semi-detached, townhouses) ▪ \$8,000 per dwelling for all other residential accommodation ▪ \$10 to \$15 per square metre for industrial ▪ \$20 to \$30 per square metre for commercial ▪ \$30 to \$40 per square metre for mixed uses. <p>iv. Governance arrangements and criteria for infrastructure projects to be established.</p>	Currently contingent on the Amendment Bill
5.2	<p>Improve guidance for state planning agreements</p> <p>Publish a guideline for state planning agreements to ensure they:</p> <ul style="list-style-type: none"> ▪ support out-of-sequence development in areas not supported by special infrastructure contributions plans, or ▪ facilitate the direct delivery of development-contingent infrastructure. 	Implementation underway
5.3	<p>Adopt transport contributions for major projects</p> <p>i. Prepare and implement a transport contribution for major projects that:</p> <ul style="list-style-type: none"> ▪ is additional to regional infrastructure contributions, where these apply ▪ applies to properties within a service catchment and is subject to additional development capacity created as a result of the investment. <p>ii. Contribution charges should be established for residential and non-residential uses. A minimum charge of \$5,000 per dwelling should be applied, with Transport for NSW required to apply higher charges where costs and benefits are relatively higher.</p>	Currently contingent on the Amendment Bill
5.4	<p>Create a new category of contributions specific to biodiversity</p> <p>i. Create a new contribution category under Part 7 of the EP&A Act for biodiversity offsets.</p> <p>ii. Prepare and implement a biodiversity contribution for areas subject to biodiversity certification.</p>	Currently contingent on the Amendment Bill
5.5	<p>Phase in metropolitan water charges for more efficient delivery of water infrastructure</p> <p>i. Rescind the 2008 Section 18 Direction that approved zero developer charges for water, wastewater and stormwater services for Sydney Water and Hunter Water.</p> <p>ii. Direct Sydney Water and Hunter Water to reintroduce water charges and include provision for:</p> <ul style="list-style-type: none"> ▪ the approach to phase-in, and ▪ exemptions for development completed prior to 1 July 2026. <p>iii. Establish a service level agreement for Sydney Water and Hunter Water for expenditure of water charges funding.</p>	Implemented from September 2023 <ul style="list-style-type: none"> • Being progressed by Sydney Water and Hunter Water.
6.1	<p>Develop and implement a centralised contributions digital tool</p> <p>i. Develop a contributions digital tool in the NSW Planning Portal, integrated with the spatial mapping and development application system, which requires:</p> <ul style="list-style-type: none"> ▪ councils and the State to make contributions plans ▪ receive and track payments ▪ report on contributions spending, fulfill accounting requirements, and report on the infrastructure delivery pipeline 	Implementation underway

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		<ul style="list-style-type: none"> ▪ landowners and developers to estimate, calculate, and pay their infrastructure contributions for both local and state infrastructure in one place, ideally in one payment. ii. Amend legislation to support the digital tools and require their use to be phased in. 	
6.2	Promote consistency and transparency in works-in-kind agreements	Develop a practice note to guide efficient and consistent use of works-in-kind agreements.	Implementation underway
6.3	Build the capability and expertise of the planning sector	<ul style="list-style-type: none"> i. Create and maintain consolidated guidance material for each contribution mechanism that reflects up-to-date information and integrates with the digital tool. ii. Implement a training and professional development program to support planning practitioners and build a knowledge sharing culture within the planning system. 	Implementation underway
6.4	Introduce a simple, clear, standardised exemptions policy	Produce a simple, clear, standardised exemptions policy, underpinned by guiding principles, to ensure a consistent and transparent application of exemptions.	Implementation underway
6.5	Better synchronise State and local strategic planning frameworks	<ul style="list-style-type: none"> i. Amend legislation to update the review timeframes of Local Strategic Planning Statements to five years, in line with other State and regional plans. ii. Issue a Ministerial direction extending the regional implementation plan timeframe to cover a 4-year period to align with councils' delivery program. 	Implementation not progressing
6.6	Incorporate the local infrastructure contributions system into the Integrated and Performance Reporting framework	<p>Update the Integrated and Performance Reporting guidelines to require councils to:</p> <ul style="list-style-type: none"> ▪ include infrastructure contribution plans in their reporting ▪ review their infrastructure contributions plans by 1 July 2024, and every four years thereafter (or earlier if required), to align with their delivery program. 	Implementation underway <ul style="list-style-type: none"> • Department of Planning and Environment is progressing as a practice note – no legislation is currently proposed.
6.7	Strategic planning to maximise the efficient use of land	<ul style="list-style-type: none"> i. Issue a Ministerial Direction to require planning proposals to demonstrate consideration of efficient use of land, including opportunities for dual-use and joint-use. ii. Develop a practice note to establish performance-based benchmarks for open space planning. 	Implementation underway <ul style="list-style-type: none"> • Department of Planning and Environment is progressing as a practice note – no legislation is currently proposed.
7.1	Strong governance to guide implementation	Establish an Implementation Steering Committee to oversee implementation of the reforms.	Implementation underway