

Submission
No 104

**INQUIRY INTO ENVIRONMENTAL PLANNING AND
ASSESSMENT AMENDMENT (INFRASTRUCTURE
CONTRIBUTIONS) BILL 2021**

Organisation: Housing Industry Association

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The Secretariat
Portfolio Committee No. 7 - Planning and Environment
NSW Legislative Council
Parliament House
SYDNEY NSW 2000

Dear Committee members

Environmental Planning & Assessment Amendment (Infrastructure Contributions) Bill 2021

On behalf of the Housing Industry Association (HIA) please find attached HIA's submission in relation to the *Environmental Planning & Assessment Amendment (Infrastructure Contributions) Bill 2021*.

HIA is extremely concerned that amendments set out in the Bill to introduce a new 'land value contribution' have not been the subject to consultation with residential building and development industry or with the community. The details set out in the Bill on this new tax are extremely limited and HIA has a range of questions and concerns that we believe should be addressed prior to the Bill proceeding.

HIA's submission also outlines some matters that we believe consider worthy of reconsideration by the Government with a view to improving the transparency and certainty of state and regional infrastructure contributions.

HIA would be pleased to meet with the Committee to discuss these matters in further detail.

I can be contacted on _____ or _____.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

David Bare
Executive Director, NSW

Environmental Planning and Assessment Amendment (Infrastructure Contributions)
Bill 2021

Issues of Concern to the Housing Industry Association

Overview

The NSW Government has introduced a Bill to update the existing planning laws that set out the requirements for collecting infrastructure contributions at a state, regional and local level across NSW.

Infrastructure contributions have become a significant cost on housing in NSW. The price of new housing in Sydney is now made up of 50 per cent taxes and charges, arising from the combined Commonwealth, state and local taxes applied throughout the zoning, subdivision and development process¹.

HIA recognises that many of the proposed amendments in the Bill are an effort to redraft existing provisions and to provide greater clarity on existing infrastructure contribution requirements for both local and state contributions. The majority of these amendments are appropriate.

However, the Bill includes provisions that will allow the creation of a new tax on housing, being the 'land value contribution' charge. It is understood the intention of this new tax is to provide local government with the ability to levy a contribution on land that is rezoned and then sold. HIA acknowledges that the current financial capacity of NSW local governments is limited due to rate pegging, however providing an avenue for additional funding through the creation of a new tax is not in HIA's view the most appropriate policy response.

At present, only the details set out in the Bill are the details publicly available in relation to this new tax. No further detail on the potential scope and cost of this charge are available. It appears that these will be matters disclosed in future regulations and in other potential legislative instruments. If this is the case, HIA believes that the draft Regulations should immediately be made available prior to the Bill being considered by Parliament. This should include any other necessary supporting material that can clearly outline for the community, and the residential building industry, the manner in which land value contributions are intended to operate.

As currently drafted, HIA is also concerned that the Bill provides the ability for a council to charge a land value contribution and to then charge either a local infrastructure contribution or a local levy contribution. This means there appears to be scope for councils to add even more cost to new housing developments. Certainty needs to be given in the Bill that the cost of purchasing land is not duplicated (collected twice) across the land value contribution and the local infrastructure contribution.

It is noted that the land value contribution appears to be aimed at the party selling land that is or has been rezoned. The Bill seems to assume that this cost will be borne by the vendor and not impact the future price of the land – this is not correct. 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.

The following submission outlines HIA's key concerns in relation to the Bill and we would appreciate addressing the Committee on these issues should the opportunity be available.

¹ *Taxation of the housing sector: Final Research Report*, The Centre for International Economics, June 2019

HIA Comments on the Environmental Planning & Assessment Amendment (Infrastructure Contributions) Bill 2021

KEY CONCERNS

Issue 1 – Changes to existing local infrastructure contributions framework

Amendment [19] Section 7.11 – 7.13

Comments

- The proposed amendments to Sections 7.11, 7.12 and 7.13 are primarily redrafting to improve interpretation and on this basis HIA has no concerns.
- HIA notes the inclusion of references to the new 'land value contribution' in section 7.11 and 7.13.
- While HIA remains concerned about the introduction of land value contributions, the inclusion of section 7.13(3) which appears to ensure that only councils can use 'land value contributions' is supported.

Issue 2 – Introduction of land value contributions framework

Amendment [8] Section 7.1 Definitions

Amendment [22] Divisions 7.1, Subdivisions 3, 3A and 3B

Amendment [25] Sections 7.18, 7.18A and 7.19

Comments

- HIA is extremely concerned that there has been insufficient information made available in relation to the manner in which the proposed 'land value contribution' will operate, what the cost implications may be on new housing and whether there will be a reduction in the costs of other infrastructure charges currently permitted by both state and local governments.
- Section 7.16C(3) states that a land value contribution will be 'jointly and severally liable' on the vendors where more than one vendor of the land is captured.
- HIA would expect that where a charge is applied on the land, that this would be apportioned across multiple owners in a fair and reasonable manner based on the size of their holdings in the land value contribution area.
- HIA seeks further clarification about how the land value contribution would be apportioned across multiple land owners.
- Section 7.18(5) & (6) state:

(5) A contributions plan must not identify land for which a land value contribution is required unless –

- (a) a change to the planning controls that apply to the land will enable more intensive development of the land and, as a result, increase the value of the land, and*
- (b) the intensive development will require land to be provided for a public purpose.*

(6) A contributions plan that identifies land in a land value contributions area must –

- (a) identify the land in the land value contributions area that is required for a public purpose; and*
- (b) specify the maximum amount of the land value contribution, including by reference to a maximum percentage of the value of the land, and*
- (c) specify the way in which the owners of the land in the land value contributions are will be notified of the land value contributions, and*
- (d) be published on the NSW planning portal.*

- Section 7.18A goes on to outline that the Regulations will provide further details on how councils can apply the land value contribution in subsections 7.18A(d), (e) and (f).
- While Section 7.18 and 7.18A provides the most detail, publicly available to date, in relation to the operation of the land value contributions, this information is extremely limited and in HIA's view this is inappropriate.
- It is impossible for HIA to gauge what the real impact of the new tax will be on current land owners and more importantly future home owners.

Recommendation

- HIA does not support amendments [8], [22] and [25] as they relate to the introduction of the land value contribution. HIA seeks much further information in relation to how the land value contribution would be managed by local councils, what land would be captured, and what other infrastructure charges would be removed should these provisions be enacted.

Issue 3 – Amendments to special infrastructure contributions

Amendment [27] Division 7.1, Subdivisions 4 and 5

Comments

- HIA notes that the proposed changes to recast special infrastructure contributions as regional infrastructure contributions do not significantly change the manner in which these contributions are administered in the future.
- HIA supports the intention to create dedicated funds for both transport infrastructure and strategic biodiversity areas within the special deposits account fund. This genuine hypothecation of funds paid towards infrastructure required is how all regional infrastructure funds should operate in HIA's view.
- On this basis, HIA is disappointed that there has been no change to the new section 7.23 and section 7.28 that introduce the concept of nexus for state infrastructure funded by a regional infrastructure contribution.
- HIA is also disappointed that these contributions can be attributed to "funding recurrent expenditure relating to the providing the regional infrastructure" as set out in section 7.23 (2)(c). Once state or regional infrastructure is delivered, particularly under an arrangement where there is no nexus to the parties required to pay the contribution and the infrastructure delivered, the ongoing operation of that infrastructure should be funded by other general revenue sources.

Recommendation

- HIA supports the deletion of section 7.28 and necessary amendments that would ensure all regional infrastructure contributions have a nexus between the home owners paying the contribution and the infrastructure delivered.
- HIA supports the deletion of section 7.23(c) to ensure that regional infrastructure contributions are not permitted to be used to fund recurrent expenditure.

Issue 4 – Potential duplication of affordable housing contributions

Amendment [29] Section 7.32(6)

Comments

- The effect of this amendment would appear to be that in the future an affordable housing contribution could be charged as both a local infrastructure contribution and a state infrastructure contribution on the same development approval.
- HIA does not support the potential for a single project to be 'double dipped' for the purposes of affordable housing.

Recommendation

- HIA recommends that Section 7.32(6) be retained.

Issue 5 – Definition of contributions

Amendment [8] Section 7.1 Definitions

Comments

- The introduction of a definition for contribution is supported. However, HIA notes that the permitted methods of remitting a local infrastructure contribution has always included the provision of ‘material public benefit’, otherwise known as ‘works in kind’ that deliver the intended infrastructure.

Recommendation

- HIA would support the inclusion of ‘material public benefit’ in the definition as a third method that can be taken as satisfying a local infrastructure contribution requirement.

Issue 6 – Altered arrangements for public notification of planning agreements

Amendment [1] Section 2.21

Amendment [2] Section 2.21(2)(e1)

Amendment [3] Section 2.23

Amendment [16] Section 7.5

Comments

- The proposed amendment appears to effectively remove the requirement for certain planning authorities to undertake public consultation on planning agreements.
- Noting that planning agreements are a matter of agreement between the two parties, this amendment appears to be a reasonable adjustment that will hopefully streamline the agreement process.

OTHER CONSEQUENTIAL AMENDMENTS

Amendment [4] Section 3.9 Local strategic planning statements of councils

Comment

HIA supports a reduction in the timeframe for the review of local strategic planning statements.

Amendment [5], [6], [7], [9], [10], [11], [12], [13], [14], [15], [17], [20], [21], [23], [24], [26], [28], [30], [31], [32] and [34]

General comment

These amendments are considered administrative in nature and HIA raises no concerns with these provisions.