Submission
No 2

INQUIRY INTO ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (HOUSING AND PRODUCTIVITY CONTRIBUTIONS) BILL 2023

Organisation: Urban Taskforce

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The Hon Sue Higginson MLC
Chair
Portfolio Committee No. 7
Legislative Council
Macquarie St
SYDNEY NSW 2000

Dear Ms Higginson

Re Review of the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023.

Introduction

I write in relation to the NSW Legislative Council Portfolio Committee No.7 review of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023*.

As Committee members will be aware, NSW is presently in the grip of a housing supply and affordability crisis which is having a devastating impact, both socially and economically. This is the wrong time to be increasing taxes on housing supply.

Building and construction costs, rents and new home prices are skyrocketing. It is unprecedented that house prices remain high despite the recent hike in interest rates. This reflects a chronic shortage in supply.

Urban Taskforce is gravely concerned over any proposed increase in fees and charges that increase the cost of supplying housing in NSW.

NSW currently has the highest fees and charges associated with housing supply in Australia. Stamp duty, GST, company tax, section 7.11 and s. 7.12 contributions, land taxes, affordable housing contributions, local green space contributions, the proposed restitution of water infrastructure charges (which were abolished in 2008) and now the Housing and Productivity Contribution charges. All these fees taxes and charges have cumulative impacts that add to the cost of housing in NSW and are substantially greater than charges applied in other states.

The cumulative impact of these charges, combined with higher interest rates, labour shortages and escalating construction costs, is having a devasting impact on housing supply and entire housing and construction industry. Recent ASIC reports state that around five building companies are exiting the industry every day.

The lack of profitability in the sector means that that the property development sector has been eating into their own margins to simply keep the broader construction industry afloat. Margins are wafer thin and there is no capacity to absorb additional charges. This means that any fee or levy imposed on the sector will be passed on to the consumer – those wanting to purchase a home.

Timing of infrastructure contribution payments

The NSW Productivity Commission engaged with the industry when it prepared and released its *Review of Infrastructure Contributions in NSW* in November 2020.

Amongst its recommendations addressed issues with cash flow, which at the time were critical owing to the COVID pandemic. Recommendation 4.10 of the Report recommended that the Government defer payment of section 7.11 contributions from the construction certificate stage to that of the occupation certificate stage. The NSW Productivity Commission identified a number of benefits from this change, stating that the **"*deferral of payment can provide significant benefit and allow more development projects to commence*"** (Productivity Commission, 2020, p.71).

The same logic clearly applies to section 7.24 payments.

Payment of contributions at Construction Certificate stage comes when cashflow is tightest, and the drawdown on finance from lenders is at its highest.

In 2021, the Government of the day adopted the Productivity Commission's recommendation in relation to the deferral of section 7.11 and 7.12 local infrastructure contribution payments till Occupation Certificate.

The measure was so successful in keeping project finance and construction work going during COVID, that the NSW Productivity Commission recommended that the change be permanently applied. However, this requires legislative change, as the authority for the changes made during Covid expired in March 2022 (see section 7.17 (1A)).

A permanent change to the timing of the payment of all infrastructure contributions arising from sections 7.11, 7.12 and 7.24 would be of significant assistance to the industry at a time of severe financial constraints and ultimately lead to the delivery of more housing in NSW.

The introduction of this Bill is an opportunity to make positive changes to the timing of payment of infrastructure charges under sections 7.11, 7.12 and 7.24 of the Act.

Urban Taskforce has listened to concerns expressed by DPE regarding having section 7.11 and 7.12 payments payable at a different time to section 7.24 payments. The simple answer is to take this opportunity to make the payment timeframe consistent and give effect to the NSW Productivity Commission's recommendations.

Amending the timing of the payment of all infrastructure charges is administratively simple. If this were not to be done, a new Bill would need to be brought to the Parliament to enable section 7.11 and 7.12 charges to be paid at OC (the actual recommendation of the Productivity Commission).

As noted above, the application of section 7.17 (h) in the EP&A Act, which allowed the Minister of the day to make an order to defer section 7.11 and 7.12 payments until the issue of the OC. This change was explicitly linked through section 7.17 (1A) to the special COVID legislation which itself was time limited.

Despite the recommendation by the NSW Productivity Commission (which the former government committed to implementing in full), the former government did not make this change permanent.

To make permanent the capacity for the Minister to determine *"the time at which a monetary contribution or levy is to be paid",* the only amendment required to the legislation would be to repeal section 7.17 (1A). To give effect to the Productivity Commission's recommendation, and amendment would need to be drafted to the Bill before the House to repeal section 7.17 (1A) and replace section 7.17 (h) with the following:

> *"7.17 (h) payment of a monetary contribution or levy arising from section 7.11, 7.12 or 7.24 shall be payable at a time not earlier than before the issue of an occupation certificate."*

The additional advantage of a change to the timing of payment of contributions would be that it makes payments simple for Treasury and Local Government as well as for the developer as all payments would be made prior to the issue of the Occupation Certificate.

This is also beneficial in terms of cashflow as the issuing of the Occupation Certificate triggers settlement on outstanding payments for the new home. No developer would hesitate in making the payments when it will trigger OC and thus the realisation of what is typically 90% of the cashflow for a project (10% paid at deposit and 90% upon occupation and settlement).

Whilst the deferred timing of payments will affect the timing of revenue flow for the State Government, this is vastly outweighed by the negative impact on housing supply which would arise from the imposition of charges at the tightest point in the financing of housing development.

The point of just prior to the start of construction is pivotal for building projects. All deposits taken have been spend on interest payments for the purchase of the land along with the costs associated with preparing the development applications, the building design and many professional consulting services.

Put bluntly, if banks are going to pull the pin on a project, just before construction starts is the time this is done. If extra taxes are applied at this time, the risk of funding being withdrawn is exacerbated significantly.

With interest rates rising, and the cost of construction also rising, banks are increasingly reluctant to allow drawdown of finance for construction. An additional impost of a section 7.24 HPC charge in many cases will tip the balance and cause banks and financiers to defer commencement of construction. It is worth noting that most section 7.11 and 7.12 local infrastructure charges are still being paid at OC as buildings being completed now were almost all approved during the COVID period when the deferral of payments order applied. When these projects flow through, section 7.11 and 7.12 payments for projects approved after March 2022 will revert to having their payment made at CC. This will have an immediate impact on housing supply. The Bill as proposed will make this worse.

Any additional fee, tax or charge applied at this financially critical time for a construction project may jeopardise or delay the proceeding of housing development, resulting in no contributions being made (or at least being delayed) until such time that broader market conditions are more favourable. This would not only endanger the deliver of the housing needed to address the supply crisis, but have further impacts throughout the economy including the loss of GST revenue, company tax, income tax, payroll tax and stamp duty (once construction is complete).

Deferred implementation

Given the significance of the housing supply crisis and the confluence of an array of factors that will only serve to deteriorate the present situation, the Committee should also consider the deferment of these contributions for at least 12 months. The Bill as it stands has a phased in implementation on commencement of the new charge on October 1, 2023. For the initial period between 1 October 2023 and June 30, 2024, a 50% discount rate will apply. From July 1, 2024, to 30 June 2025, at 25% discount rate applies, with the full contribution payable from July 1, 2025, onwards.

Even if the Government were to establish a broader range of strategies designed to alleviate the present housing supply crisis, it will take a number of years for these immediate reforms to have a meaningful impact on housing supply. Urban Taskforce believes the implementation of the Housing and Productivity Contribution should be deferred for an initial 12 months, with the existing phase ins retained. This would mean the full contribution would be payable from July 1, 2026. It is hoped that at this stage broader reforms may have had an impact on addressing the severe supply crisis we face in 2023.

Recommendation 1: that the Committee recommend an amendment to the Bill repealing section 7.17 (1A) of the Environment Planning and Assessment Act 1979 and replace section 7.17 (h) with the following:

> ***"7.17 (h) payment of a monetary contribution or levy arising from section 7.11, 7.12 or 7.24 shall be payable at a time not earlier than before the issue of an occupation certificate."***

Recommendation 2: that the Committee recommend the deferral of the introduction of the Housing and Productivity Contributions until 1 October 2024 and retain the current phase ins from that date.

Conclusion

Urban Taskforce opposes any new tax on housing supply. But in the spirit of compromise and recognising the work of the NSW Productivity Commission to share the load of funding growth, we support the changes if the deferral of timing of payment of all infrastructure charges is legislated.

This simple change will make an enormous difference to the viability and feasibility of housing supply. Without this change, the Parliament risks not achieving the revenue projected as well as not delivering on housing supply. Surely this would be a worst-case scenario which must be avoided. Urban Taskforce urges all members of the Legislative Council to support housing supply and support the recommendations above.

Should any Committee member wish to discuss matters relating to this submission, please contact me on or via email .

Yours sincerely

Tom Forrest
Chief Executive Officer