

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 7 - PLANNING AND
ENVIRONMENT**

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

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Virtual hearing via videoconference on Friday 16 July 2021

The Committee met at 9:15 a.m.

PRESENT

Ms Cate Faehrmann (Chair)

The Hon. Catherine Cusack
The Hon. Ben Franklin
The Hon. Rose Jackson
The Hon. Mark Latham
The Hon. Shayne Mallard
The Hon. Mark Pearson (Deputy Chair)
The Hon. Adam Searle

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The CHAIR: Welcome to the virtual hearing of the Portfolio Committee No. 7 – Planning and Environment inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021. Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to Elders past, present and emerging of the Eora nation. I extend that respect to any other Aboriginal people who may be joining us today. Like so many other things that we have needed to adapt to in the face of COVID-19 health measures, the hearing for this inquiry will be conducted via videoconference. This enables the work of the Committee to continue without compromising the health and safety of members, witnesses and staff. I ask for everyone's patience and forbearance through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat.

Today we will hear from a number of stakeholders including the NSW Productivity Commissioner, the Minister for Planning and Public Spaces and departmental representatives, local government representatives, community organisations, legal experts and developer, housing and property organisations. I thank everyone for making the time to give evidence to this important inquiry. Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript for today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence via videoconference today, it does not apply to what witnesses say outside of their evidence at the hearing. Therefore, I urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. Given the short time frames for this inquiry, the Committee has resolved that witnesses will have until the close of business next Wednesday 21 July to provide answers to questions on notice. As witnesses are appearing via videoconference, it may be helpful to identify who questions are directed to and who is speaking. Finally, could everyone please mute their microphones when they are not speaking.

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PETER ACHTERSTRAAT, NSW Productivity Commissioner, sworn and examined

The CHAIR: I now welcome our first witness. Mr Achterstraat, would you like to make a short opening statement?

Mr ACHTERSTRAAT: Yes. Thank you for the opportunity to say a few words and answer a few questions in relation to this important bill. One of the main issues that people keep raising with me in my role as the NSW Productivity Commissioner is housing affordability and housing supply. I was very pleased to be asked to do this review of infrastructure contributions. The process I used—very quickly, Chair—was, instead of coming up with a final set of recommendations straightaway, I spent three months talking with people and came up with an issues paper, which I published, with the initial thoughts I had. I then reality tested that with a wide range of stakeholders and came up with my final recommendations. There are 29 recommendations. One of the things there was unanimity about when people talked to me was that, if there is to be a housing development, it needs to have appropriate infrastructure to support it. That was agreed by most people.

The two issues that arise are then what infrastructure is needed and who pays for it. On who pays for it, is it people related to the development, is it the ratepayers in the council area or is it other citizens of New South Wales? Chair, I noticed a number of the submissions we have relate to some greenfield ones, so I will state the problem as I see it using a case study on the greenfields and then how I went about the solutions. It will only take a minute or two. If we look at the greenfields one, we have a farmer who has a farm. The farmer has that land rezoned from farming to housing and the value of the farm goes up. The farmer then sells 10 acres of land to a developer. The developer then goes to the council and seeks a development application. The council then says, "There is a million dollars that you have to pay eventually for a contribution to help us pay for infrastructure where we have to buy land and build roads and drains."

A short time later the developer starts building the development, sells the development and there are another 250 people living in that local government area. That is the situation at the moment. The issues that people are saying are problems are, first of all, for the developer, when they buy the land off the farmer that do not know what the infrastructure contributions will be. They get a surprise when they are told later on by the council what it will be. Secondly, when the council goes to buy the land a couple of years after the development application [DA] has been approved, the price of the land has gone up dramatically. A lot of the money the council would have received in cash for the infrastructure contribution is actually used to buy the land back at a much higher price than it was before. Thirdly, developers and others are saying, "We do not mind paying these contributions, but we really do not know how they are spent. Please tell us how they are spent. We would like to know." It has to be more transparent.

Finally, Chair, a problem that people are saying is, "These extra 200 people in the local government area, because of rate pegging, the council cannot provide services for these people, nor can the council provide maintenance on the capital that has been built." That is a snapshot of the problems. I will give my four main recommendations and then I really would like some questions if possible. First of all, the central one is that rate pegging should be lifted in relation to population growth. So if there are 200 more people moving into your local government area, then the local government should be able to increase the rates to be able to provide services for those.

Secondly, in relation to the developer contribution, it should be made clear at the time of rezoning, not later at the DA time. When the farmer or if anybody has land rezoned, the council has to say then what the infrastructure contributions will be. It is not paid then, Chair; it will be paid later. But the people who buy the land later will know exactly what the contributions will be. The third main recommendation is that there be a land component in the developer contribution. At the moment, I am recommending that at the time of rezoning the council will say to the landowner, "The developer contributions will be X dollars per block plus also we will need extra segments of the land to build infrastructure on. We will need, say, 10 per cent of the land to build infrastructure." And so later on then the council does not have to buy that land.

Also other recommendations are that the State infrastructure contributions—which is a bit ad hoc at the moment, ranging from zero to \$55,000 per block—I am recommending a standardised approach for a regional infrastructure contribution. Finally, I am recommending that there be greater transparency so that the people will see the contribution; the councils and the State Government put on the web the money they have received and the money that is spent. That is a snapshot, Chair, and I really would welcome any questions if I can help to clarify things.

The CHAIR: Thank you very much, commissioner. Yes, I am sure there will be questions. We will go to the Opposition first.

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The Hon. ADAM SEARLE: Commissioner, thank you for that brief opening statement. Like other members of the Committee, I was very interested in your reform. Thank you for engaging subsequently to that. In relation to the bill that we are actually considering, do you feel that the bill reflects all of the elements of your report, noting, I think, your submission that it is a sort of holistic package?

Mr ACHTERSTRAAT: Thank you very much, Mr Searle. The bill does put in the legislation a number of my key recommendations and then some of them, I assume, will be in regulations. For example, the bill does cover regional infrastructure contributions and that would now take into account payment of the biodiversity and affordable housing exceptions. So the bill does take into account that. The bill also takes into account the direct land contribution, which is one of my key recommendations, and the bill also does look at the section 7.12 recommendations I have got to change the adjustment. Finally, the bill does look at—and this is, I guess, a bit of a controversial one—a recommendation that the Minister be given the power to extend the payment time to offer some assistance with that and to continue that.

Where the regulations, I hope, will cover some other remaining recommendations, Mr Searle, is in relation to the transparency. I am very keen for all the expenditure to be put on the web and for people to know it. I know that the bill will amend section 7. New section 7.16A says that that the regulations have the power to require councils to put that information on the web. I will be very encouraged if that power is exercised and that that information does go on the web. Also I think the regulations will be covering the rezoning where the contributions are made at the time of rezoning. I do not think that is in the bill but I think the regulations will cover those. Finally, the essential works list where I have made a point in fact is covered in today's newspaper. I have made a recommendation for essential works and I think that will be covered by ministerial direction rather than in the bill. I think the bill covers a number of the main points, Mr Searle, and the others will be covered in the regulations.

The Hon. ADAM SEARLE: That is actually the point I was going to come to, commissioner. The bill in a sense is a sort of broad-brush, facilitative, basic legislation but many of the drivers—the ministerial directions and the regulations that will really give us a really strong sense of how this will be implemented—are missing. We cannot evaluate whether the Government's intentions in that space are good, bad or indifferent because we simply have no idea what it is at this stage. A number of stakeholders, whether from the development industry, local government or the wider community, have all hit that as their prime concern. There seems to be a broad agreement about the thrust of your report and the thrust of the legislation, but with so much missing it is very hard to make an informed decision about such a big reform. Do you think that is a fair criticism?

Mr ACHTERSTRAAT: Mr Searle, the Government has indicated that they have accepted my recommendations. Three or four of them are subject to quantification, of course, and I accept that. But the Government has said that they accept my recommendations. The bill does put into place legislative functions and recommendations to provide for the ability for regulations to cover those other ones.

The Hon. ADAM SEARLE: Okay. Just looking at your submission, which I think we received yesterday, you say that there is modelling done by the Centre for International Economics. Are you aware whether the Committee members have access to that full modelling, or is that just something—

Mr ACHTERSTRAAT: If the rules allow it, I would be very happy for you to have that and, I guess, some of that modelling is in relation to extra money or rates that would be received by councils in relation to rate pegging and this other model as well. So if the rules allow it, I am very keen for the Committee to have it.

The Hon. ADAM SEARLE: Okay. I would appreciate that, and if that can be done that would be good. I see you say there will be a net reduction in revenue from infrastructure contributions of around \$90 million so councils will receive less money but that is going to be offset by other revenues, including the growth in terms of the rate pegging exception. I accept your reform proposal about growing the rate peg when population grows, and that might be an answer to what is happening in Sydney's west and south-west and maybe the north-west as well. But in my council area, the Blue Mountains—and there are others in regional centres—you have either static populations or possibly even population reductions but you still have, in the case of the Blue Mountains, usually high tourism numbers. You have got tourism infrastructure and you have got other local infrastructure that needs to be maintained and replaced. None of the recommendations that you have made seem to address those sorts of issues. What do you think can happen for those councils?

Mr ACHTERSTRAAT: Thanks for the question, Mr Searle. Now the \$90 million reduction in the infrastructure contribution—I will have to double-check this, Mr Searle—my understanding is that a lot of that is the land component. So that is the dollar figure but the councils would actually receive a land component as well. But I will have to check to make sure it is right.

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The Hon. ADAM SEARLE: Okay. That would be useful if you could come back to us when you have done that. I accept what you say—that the Government has said that they have accepted your recommendations and will implement them—but this is a very big reform. In terms of the modelling, a number of the submissions we have got from the local government sector seem to contest, I think, that modelling. They claim to have done modelling of their own that says there is going to be a significant negative financial impact on the local government sector. I guess we are not really in a position to adjudge that unless we see the Government's modelling and any modelling we can get from the local government sector and try to work our way through that. Do you think that is a fair thing for us to want to do?

Mr ACHTERSTRAAT: Absolutely, Mr Searle. Our modelling is robust. We use certain assumptions. Other modelling might use different assumptions. I think it is fair to say that the relaxation of the rate capping will, irrespective of what assumptions are used, mean that more money will come in for those councils which are growth standalone. Our modelling shows an average of 8.9 per cent over 20 years. Now most or a lot of that is after four years; the first four years it is pretty static and then it goes up. I think other modelling may only focus on four years and then extrapolate, so I think it is important to review that modelling to go through it as well and work it out. But, irrespective of the modelling, councils in growth areas—and I take your point about the ones that are not growing—will definitely all get more revenue to be able to maintain things if their population goes up and the other ones, they will get the land component, which will save them considerable expense when the land value goes up and they have to purchase it halfway through the development.

The Hon. ADAM SEARLE: A number of reports have been had in recent times about how parts of Sydney have taken more than half of the development that has occurred over the last 10 to 20 years. You can look at the growth in western and south-western Sydney and, in particular, you see a huge amount of growth has taken place not always with the necessary social and physical infrastructure provided—certainly not in a timely way. This new rate pegging change, that will only apply going forward, won't it? There is not going to be any kind of capacity for those councils to catch up for the growth they have already experienced and the infrastructure they have already missed out on, or do you envisage it would be a catch-up capacity?

Mr ACHTERSTRAAT: That is my understanding, Mr Searle. I do not think it is retrospective, but I am not sure. [Inaudible] is my understanding.

The Hon. ADAM SEARLE: In terms of those growth areas, in many cases the horse may well have bolted in that these council areas already have had to take the significant growth that has occurred with or without the infrastructure, and there is not going to be any capacity in this package for them to get additional resources unless they are subject to yet further growth?

Mr ACHTERSTRAAT: I do not envisage this to be a retrospective. My recommendations I think were all going forward. So I think what you say is accurate, Mr Searle.

The Hon. MARK LATHAM: Mr Achterstraat, it strikes me that the package has six or seven moving parts financially. One of the difficulties for us in grappling with the package is how it plays out in aggregate. When the rubber hits the road, what does it actually look like in a greenfields or a new release area? What does it look like in an infill area? Can you supply case studies as to what those scenarios might involve financially? I did ask the same thing of the Minister's office and I got back a scenario for a greenfield release area, the current and the reformed package. The combined local and State development contributions dropped from \$87,000 to \$51,500, which is a huge loss of capacity for the providing of essential services to these new communities in a greenfield or release area. Can we get more case studies? How could you possibly expect Parliament to pass through a model which on this single case study I have been provided with has such a monumental drop in service provision capacity?

Mr ACHTERSTRAAT: I think that would be very helpful, to get some case studies. In fact, I did contact the department only at the very last minute to ask for some case studies. I am hoping that the department will be able to put those together. I will run my eye over them and then pass them on. So I cannot comment on specific case studies at the moment, but I think it would be helpful, as you stated, to get some of the greenfields and others for infill.

The Hon. MARK LATHAM: On this one where there is a drop of \$36,000 service provision capacity per lot, what is your general feeling about what is an acceptable level of service provision capacity? I know in western Sydney we would not want any drop in capacity. It has been a 50-year struggle to get decent services in before the people move in.

Mr ACHTERSTRAAT: I generally do not like to comment on things I do not know too much about, although I will make an exception here. I imagine that if the figures show there is a drop, I would have to look behind that. Does that take into account the land component as well?

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The Hon. MARK LATHAM: It does.

Mr ACHTERSTRAAT: It does take it? I am sorry, Mr Latham, I do not want to comment on something I do not know all the details of, but I will gladly go through that in intimate detail and look at them.

The Hon. MARK LATHAM: There is a \$9,500 land contribution and so forth. But anyway, I will be providing this case study to other members of the Committee and pass it on to you.

Mr ACHTERSTRAAT: Right.

The Hon. MARK LATHAM: But I think we need many more.

Mr ACHTERSTRAAT: Yes.

The Hon. MARK LATHAM: Because one of the issues with this drop, \$30,000 of it comes from the fact that under the current scheme they are projecting here that there was a special infrastructure contribution [SIC] contribution. What about areas where that is not the case? I know there are variations here but I think we need to get the case studies to understand this package in its totality. Can we come to the question of the benchmarking of efficient service provision? What are you expecting is the methodology that the Independent Pricing and Regulatory Tribunal [IPART] would use for that? When would we expect that methodology to be publicly available?

Mr ACHTERSTRAAT: With the essential services list, which covers basically hard infrastructure to a certain extent—which is roads and parks et cetera—does not necessarily cover the more human services infrastructure, as is my understanding, in relation to libraries et cetera and things like that for community services. What I have recommended is that IPART review the essential services list to see what should be on it, and also that they benchmark the things in order to see what is efficient. My experience of benchmarking is it is better not to be too specific and granular because the needs of a library in one particular area would be very different to the needs of a library in another because the people may need different things; even the actual building itself may be different. So I would be imagining that the IPART review of the benchmarking would not be saying, "Well, a library is going to cost X amount of money." It would be a little bit more robust than that. There would not be blanket saying where if you have got a library, you are only getting this amount of money or if you are getting a footpath, it has got to be this. As for the timing, I will have to talk to IPART about that.

The Hon. MARK LATHAM: What is the point of a benchmarking? I don't follow.

Mr ACHTERSTRAAT: The benchmarking—I guess at the moment there is a perception, it may or may not be correct, that sometimes the infrastructure contribution requirements are over-engineered to a certain extent. Hypothetically, they might be saying, "Well, you need about eight inches of concrete for a footpath," whereas others might say, "You need four inches," things like that. The benchmarking gives a standard of what it should be rather than—the other perception is that councils, maybe because of rate pegging, may have been inclined to make their infrastructure so robust that it will not need a lot of maintenance over 20 or 30 years because they do not have any money for maintenance, but under their review of the rate capping they will have maintenance expenditure. From an economic point of view, you might not have a really sturdy four by four, whatever, that never needs maintenance. You might have something a little bit more modest and then the maintenance will cover it. The benchmarking is for those particular reasons.

The Hon. MARK LATHAM: Can I come to your proposal about the up-front, in-kind land contribution? In theory it makes a lot of sense. It saves money from the council's point of view not to have to buy back the rezoned land at a higher price. What is the detail of that? Because how can a council know exactly how much community land it needs and the location of it prior to the development of a subdivision plan?

Mr ACHTERSTRAAT: Say there are 10 farms together; they have all got to be looked at together. We cannot look at one individually because if, for example, when they look at 10 farms together they say, "One of those farms, we're going to need all of that land because that's where the park's going to be, that's where the road's going to be. But some of the other farms, we don't need any. But on average, the five farms together, we're going to need X percentage", say 10 per cent. Then the purchaser of that will know that 10 per cent has to be provided. There would have to be compensation and the systems will have to be worked out that way. So that those with a particular block, they are not going to have any roads or there are not going to be any community services, they may have to pay some compensation, whereas those whose land is going to take up 30 per cent maybe do not. So there is an arbitrate. But you are exactly right, we cannot look at it block by block. It has got to be looked at as the whole area together.

The Hon. MARK LATHAM: Yes, but how can a council know the parcel of land it needs and the size of it for community land at the rezoning stage if they have not got a subdivision plan?

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Mr ACHTERSTRAAT: That is why we have got to do it as a group, I think, Mr Latham. I think it is important that when the rezoning is done, they say, "We've got to rezone it, if we are going to have housing on it, it is going to be rezoned for housing, we need to now know where the roads are going to be et cetera."

The Hon. MARK LATHAM: Are you wanting councils to have a complete subdivision plan hypothetically in place at the time of rezoning?

Mr ACHTERSTRAAT: Enough so that they can work out what land component is needed. [Inaudible.]

The Hon. MARK LATHAM: It is a lot of extra work for councils in anticipation of a rezoning when they might pull out at the last moment and it all goes to waste.

Mr ACHTERSTRAAT: Yes, I accept that, Mr Latham. There is actually work for councils in relation to this.

The CHAIR: Commissioner, looking at the submissions from local government, there seems to be consensus concern around the fact that this is coming through while there is a consultation process for the entire infrastructure contributions reform that will take place in October. Can you see a justification for the Government introducing this bill now as opposed to introducing the legislation in October or after that consultation?

Mr ACHTERSTRAAT: I am sorry, I am not in a position to comment on that, Chair. But 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.

The CHAIR: In terms of your review, did you make any comment in relation to the extension of basically the COVID-19 requirement for the ability of the Minister to make directions in relation to deferring the payment of infrastructure contributions until occupation certificate stage? That was of course allowed because of COVID. Now this bill proposes to make that permanent. Do you have views on that?

Mr ACHTERSTRAAT: Yes, I made a recommendation that the Minister does have the ability to extend that to occupation certificate, to continue the COVID. It seems to be working okay at the moment. I think, Chair, I like to look at my recommendations as a whole suite. People can cherrypick and say, "We like the rate capping view but we do not like x, y, z." Industry might say, "We do not like the increase from 1 per cent to 3 per cent at 7.12, but we do like that will be determined." I am looking at it as a whole package. Yes, I do have a recommendation that the Minister have the ability to continue that extension.

The Hon. BEN FRANKLIN: Thank you very much, Mr Achterstraat, for being here. Can I just pick up on the comment that you just made in terms of the package as a whole? Obviously this bill implements only specific elements of your reform. I think it would be valuable if you could spend a minute or two explaining how your whole suite of recommendations sits together as a package.

Mr ACHTERSTRAAT: Absolutely, thank you. As you have quite rightly said, the bill does take into account or implements legislatively a number of recommendations. In fact, I think, Mr Franklin, the rate pegging one has already been implemented. That is my understanding. That is one part that has already been implemented. It is a whole package where we are saying we need more certainty, more consistency and more transparency. Transparency is the thing that is coming through. I know the regulations do cover that. The aim of the whole package is to unlock land quicker and to make sure that the infrastructure is accurate. That is why we are saying that we need a review of the essential services list. I know in the newspaper today there is a situation where they are saying, "Listen, this could be detrimental to the sports et cetera and things like that." What we are recommending is at the moment if the 7.11 expenditure is more than \$20,000 or \$30,000, depending on whatever, then you can only spend it on essential services, which does not include the cultural and sporting—which is what is in the newspaper today. What I am recommending is that the whole of the essential services be reviewed to see what is what.

When we talk about a package, we will have developers who will be saying, "We don't want to be paying for the connections from the development to Sydney Water." I am recommending that they do pay for those because I believe that as far as possible those who are benefitting from the development should pay for it. Other situations where the developers are saying, "Under 7.12, going to 3 per cent is too high". I am saying that is a more accurate figure than the 1 per cent which at the moment is being used. The key point is, in relation to the rate pegging I am very keen for councils to have the ability and discretion to use the rates revenue for the maintenance and things like that and not to be a deterrent to new development coming in. If there were no relaxation of the rate pegging for population, you could argue that there is a disincentive for councils to allow more people to come into the area or more development. Councils will get that benefit, but at the same time we have to ensure that the whole package is looked at appropriately.

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The Hon. BEN FRANKLIN: Could you quantify the benefits, particularly for households and for normal communities? Obviously local government has concerns. You have identified that there are both things that they are going to be happy with and unhappy with, and you think that on the whole it basically ends up being a positive to them. It will be a positive to the development industry in terms of unlocking housing supply for the reasons that you outline. I am particularly interested in households and communities and what they get out of these reforms.

Mr ACHTERSTRAAT: Very good question, Mr Franklin. It depends on which household we are talking about; that is what I think. If the household is the new owner who is moving in, the new owner moving into the development will have, I believe, the most appropriate infrastructure required. If we are talking to households in the other part of a local government area that may have had to subsidise some of that in the past, I am hoping that it is all developer contribution—contingent expenditure. The overall package will globally, we believe, increase productivity by \$600 million per year. But your point is right: How does that delve down to each individual household? It depends on which household is involved. I believe greater certainty and greater transparency, particularly the transparency side—and I do hope that the people who implement that regulation do make it very clear on the transparency, that the web has to say where the money has been spent.

The Hon. BEN FRANKLIN: Obviously through COVID one of the things that we found particularly in regional New South Wales is the importance of unlocking new housing supply. Could you very briefly discuss how deferring the timing of contributions payments can actually assist in that? I know that you refer to that in your submission, but if you have any extra clarification to make, that would be great.

Mr ACHTERSTRAAT: Absolutely. That is one of the key goals of my 29 recommendations. If there is greater certainty, if a farmer selling the land knows exactly what the contributions will be and the developer purchasing the land will know what is expected, then there can be greater certainty and things can happen quicker. If the council then knows it has got this land locked in, locked aside, it will not have to worry later on if the land price goes up and it can start getting on with things quicker. I am a firm believer that greater consistency, greater certainty and greater transparency will make decisions quicker; decisions will be made quicker because of the package.

The Hon. ROSE JACKSON: Correct me if I am wrong because this is recent and there are a lot of different reviews I am going on, but in relation to the rate pegging to accommodate population growth—you identified that in your first key one of your four groups of recommendations and it has been referenced on numerous occasions as a key part of the package—I have understood that that actually was not finalised, that it was under review by IPART and the details of that are not available and in fact it is not even entirely clear that the Government will in fact accept what the IPART finds. Can you understand that while that is unresolved and it is unclear what that will look like and whether in fact the Government is even going to accept that proposal, it is pretty difficult to proceed with the rest of the whole package when at this point there is no transparency and certainty around that key element you used right up-front?

Mr ACHTERSTRAAT: Absolutely, Ms Jackson. One of my central planks is in relation to the uncapping of rates for the population. My understanding was that the Government had accepted my recommendation and it was going to be progressed. As to the level of detail and granularity of how that is going to work, I am the same as you; I am not exactly sure what stage that is up to.

The Hon. ROSE JACKSON: To re-emphasise, would you in fact think it would be preferable to wait in terms of proceeding with this whole package until that detail was available? Do you think that would be a preferable process in terms of proceeding?

Mr ACHTERSTRAAT: I do not think that is necessary. I think that with the uncapping of the rates it is going to increase the rate revenue for growth councils, irrespective of the way it is done. If there is more population there will be more. It may well be the actual mechanics of how that is done. Say, for example, a local council at the moment collects \$10 million in rates and then next year because of capping they are only allowed to collect \$10 million plus 2 per cent. If there are a whole lot more people coming then one would expect to be able to collect more than \$10 million plus 2 per cent. It should be \$10 million plus 2 per cent plus an amount for each of these new people coming in. So there will be an increase. I am not exactly sure. You are right, Ms Jackson, I am not sure of the mechanics or the dollar figure or how that is working. I think IPART is working on that at the moment.

The Hon. ROSE JACKSON: Can you see how, in some ways, people may have a sense that there is a little bit of unfairness here? Because when we are talking about removing rate pegging for population growth we are talking about rates going up. We are talking about ratepayers paying more, which may be justified, but let's call a spade a spade. Rates are going to increase in areas of population growth. We know that councils across Sydney are not shouldering the burden of population growth fairly. My colleague the Hon. Adam Searle raised

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this. Some councils, particularly in south-western Sydney, have substantial population growth. Not only do those areas have to shoulder the burden of more people, they have to now pay more for that at the individual household level. Whereas other areas of Sydney where there is not population growth, their rates will not increase. Can you see how when it is linked so directly to what individual households are paying in rates there may seem to be an unfairness in the way that is distributed across Sydney?

Mr ACHTERSTRAAT: When you say, Ms Jackson, that the overall rates will go up, in a growth area where there is more people yes the local council will collect more rates. But it will be pro rata for the population. There will be more houses and more people. That is why they will be getting more rates. It is not as if every house is necessarily going to be paying more. It is just that there are more houses and so that is why there will be more collected. Whereas under the existing system, there is not the scope for that. I was not sure of the second part of your question though in relation to the comparison between the high-growth and the low-growth areas. Can you just run me through that again, Ms Jackson?

The Hon. ROSE JACKSON: I suppose it is linked to the fact that with the regional infrastructure contribution—again, I do not have a lot of detail and I suppose neither do you in terms of exactly how that is going to work. But with the pooling of contributions into, say, a region like Greater Sydney, growth is not evenly distributed across Greater Sydney. I cannot see any guarantee that the expenditure of the funds from, say, Greater Sydney is actually going to be linked to areas which are shouldering the burden of growth. So you could collect funds from one area of Sydney into a regional fund and I cannot see any guarantee that those funds will in fact be spent in infrastructure in those areas. The Government could potentially spend it in a completely different part of Sydney.

Mr ACHTERSTRAAT: Thank you. I am with you now. I did not follow before, but I am with you now. With the regional infrastructure contributions, which is for State infrastructure as it were and biodiversity and affordable housing and that sort of stuff, that will be spent in—I think there are five different regions in the Greater Sydney area. It may well be that they decide that not every local council area needs a big hospital, so there is going to be one hospital for the whole region. But it will not be on the other side of the State, it will be in that—I think there are four or five. Sydney is divided into four or five regions. It will be in that particular area. So the State, which is the RIC, the regional infrastructure contribution, may not be spent in the same local government area. But that is, I guess, the purpose of the regional infrastructure contribution, because if you do a development even in a greenfield area you need a big road to get from there to somewhere else. That road may not be in that local government area.

In relation to how can we be sure the money is spent accurately, we are recommending—at the moment the State infrastructure contribution money is just sitting in the Department of Planning. It is just sitting there. Some of it is spent and some of it is not. I have recommended in my report that it be jointly managed by the Treasury and the department. Treasury has a little bit more influence on the Department of Health, the Department of Transport and the Department of Education to be able to make sure that money is actually spent. I take your point, absolutely. The regional contribution made in one local government area may well be used for a school which borders on that and is not actually in that local government area because that is where the needs are. But, from my understanding, it will not be on the other side of Sydney. It will be within that cluster of areas. That is why governance is so important and the transparency of where it is spent so people know. Developers keep saying to me, "I don't mind paying this money, but gee I wish I knew how it was spent."

The CHAIR: I am afraid we have to finish there. We have a very tight schedule today and we are over time. If members have further questions we have agreed that they can submit them via a supplementary question, which will get to you on Monday. Thank you for appearing today.

Mr ACHTERSTRAAT: Thank you very much, Chair and members, for the detail you have gone to. I really do appreciate it.

(The witness withdrew.)

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CLOVER MOORE, Lord Mayor, City of Sydney, affirmed and examined

MONICA BARONE, Chief Executive Officer, City of Sydney, affirmed and examined

CHARLES CASUSCELLI, Chief Executive Officer, Western Sydney Regional Organisation of Councils, sworn and examined

TONY DONOGHUE, General Manager, Coolamon Shire Council, sworn and examined

JULIE BRIGGS, Chief Executive Officer, Riverina Joint Organisation, affirmed and examined

RICK FIRMAN, Chairman, Riverina Joint Organisation, sworn and examined

LINDA SCOTT, President, Local Government NSW, sworn and examined

The CHAIR: I welcome our next panel of witnesses. Thank you so much for joining us remotely. As you would be aware, we have a tight time frame. We have an hour to get through your opening statements as well as what will be many questions from members. If we could keep your opening statements as short and concise as possible, I will move through the different councils. I will start with the City of Sydney to kick this off.

Ms MOORE: Thank you, Madam Chair. The City of Sydney strongly opposes the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021.

The CHAIR: Just hold off one second. It just distorted slightly. Just try that again.

Ms MOORE: Okay, start again?

The CHAIR: Yes. You don't have headphones, do you? I just wanted to check whether you had headphones because it is distorting the audio feedback on your computer when you talk.

Ms MOORE: Right. I have done a lot of this and I haven't experienced this before so I haven't had need of headphones.

The CHAIR: Keep going. It is actually a bit better now.

Ms MOORE: The City of Sydney strongly opposes the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 that was introduced in June as part of the budget legislation with no public consultation or detail and that will radically change the way local infrastructure is planned, funded and delivered. This bill is an attack on the living conditions and amenity of the people of New South Wales. Currently, we have a system where developer contributions are used by councils to provide community infrastructure in the areas where development occurs. This bill will have far-reaching consequences, including in the City of Sydney, which hosts over 1.3 million people each day and generates over 20 per cent of the State's economy.

By 2036 we will be expected to deliver another 200,000 jobs to the existing 660,000 and to house another 115,000 residents. Sydney's success over the last two decades, and its future success, depends very much on what the city does to make it livable, workable and a desirable destination for global companies. The changes risk curtailing our ability to deliver the infrastructure essential to supporting Australia's global city and major contributor to the New South Wales economy. Infrastructure contributions from developers should be spent locally. Developer contributions should be spent on infrastructure that relates to the development of the local neighbourhood. It is critical to delivering parks, open spaces, community facilities, roads and footpaths. The bill filches funding from the areas of greatest infrastructure need and puts it into a pot that can be disbursed anywhere, with little or no accountability on where or what it is spent on.

It is possible that, by breaking the nexus between developer contributions and local infrastructure and amenity, the changes could gradually erode the foundations of the City of Sydney's success and thereby the Government's economy. For example, the massive \$13 billion of private investment in the redevelopment of Green Square, which was a State initiative, is underpinned by \$1.3 billion of local infrastructure and community facilities funded by the city and developers. The infrastructure ranges from new local roads and essential trunk drainage to mitigate flooding, to parks and community facilities. Infrastructure contributions provided the bulk of this with the city funding 25 per cent. Had this bill been in place, the infrastructure contributions to the city would have been at least halved and ratepayers would have been required to pay hundreds of millions of dollars of extra rates, or this significant State project would have languished.

As it is, the State Government is still playing catch-up on delivering essential State services at Green Square even though 40,000 people have already moved in. This includes infrastructure such as public transport, open space and, until very recently, even a primary school to which the city had to contribute both the land and

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\$20 million in order to get it built. This is despite the State Government having collected an estimated \$11 billion in stamp duty from the City of Sydney since 1994.

The CHAIR: Sorry, Councillor Moore, I might just interrupt. What I think we will try with your audio is, if you are able to turn down your own speaker, that might be one reason this is happening. If you could just turn that down a little bit in terms of the volume, because it is distorting back.

Ms MOORE: [Inaudible].

The CHAIR: Sorry, that is worse.

Ms MOORE: I have a technician here. He suggested that everybody mutes their microphones now and you might be able to hear me, if that would be possible.

The CHAIR: Yes, most people I think are muted.

Ms MOORE: If everyone could mute, that might help.

The CHAIR: Yes, it wasn't you. Yes, I think somebody else was unmuted.

Ms MOORE: I will just repeat that last bit because it was really important. This is despite the State Government having collected an estimated \$11 billion of stamp duty from the City of Sydney since 1994. Similarly in Pyrmont, which the State Government has earmarked for employment and housing development, the city will need the developer contributions to provide the infrastructure that will make that place work. This bill threatens the financial viability of local councils. It proposes taking property developer contributions from local councils for community infrastructure and using them to prop up the State budget. The supposed compensation is that the Government will allow councils to charge higher rates.

This is a cynical exercise in cost shifting. "We'll take the dollars and you take the blame." This is nothing short of a State Government tax by stealth. We have not yet seen the detail but what we do know is that the State may take half of our development infrastructure contributions and expect us to make up the shortfall by raising rates. We estimate that the city would need to raise rates by 13 per cent a year instead of the 2 per cent stipulated by rate pegging for all local councils. This is outrageous. This inquiry should recommend that this bill be withdrawn or voted down. Do you want me to go over the beginning?

The CHAIR: No, that's fine. I would have stopped you sooner. Now we will move to you for an opening statement, Councillor Scott, if you have one, and again please make it short and concise if you can because we have a few councillors to get through.

Ms SCOTT: Thank you, Chair, and thank you for the opportunity for the Committee to hear from me today. Local Government NSW has advocated for a review of the infrastructure contributions system for many years. Councils of course support efforts to reduce complexity, cut red tape and improve transparency and equity. Local Government NSW and our members have therefore welcomed reforms to this complex system. However, the bill in its current form is strongly opposed by Local Government NSW. Firstly, and very disappointingly, the New South Wales Government has not consulted with local councils or significant stakeholders on the exposure draft of this bill. We were extremely disappointed to see the attempt to expedite the bill's passage by making it cognate with the New South Wales budget, therefore avoiding the level of scrutiny that it requires. Implementation of the contributions reforms will have, of course, far-reaching financial implications for councils and our communities that are unfortunately unknown at this stage because we are yet to see any of the details that underpinned the modelling, the ministerial directions or the draft regulations.

Secondly, while the bill introduces legislation that may enable the Government to implement the recommendations of the NSW Productivity Commission review into infrastructure contributions, it may also provide the Government with significant other powers—unvetted powers—to implement other reforms that are outside the scope of the Productivity Commission review without further parliamentary scrutiny. So of course, as you can imagine, this raises significant alarm for councils and, as the peak body, Local Government NSW. These reforms will have significant financial impacts for communities—whether we can build a library, whether we can support a swimming pool or whether we can build the necessary drainage and parks and footpaths that accompany new developments—cannot be plunged into uncertainty. These must be subject to parliamentary scrutiny and not left in the hands of individual Ministers into the future.

Thirdly, we fear councils and communities are at significant risk of being worse off under this legislation. The danger is, of course, that these reforms will delay or completely remove projects from council expenditure plans and that has a very detrimental impact on communities and on civic life here in New South Wales and also significantly on job creation—not something we want to risk, especially now during a lockdown and pandemic. Ensuring councils have access to ongoing funding through infrastructure contributions will empower councils to

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drive the locally led economic recovery and help us create new jobs, both temporary and permanent, for our communities. Infrastructure contributions are critical for supporting economic growth and councils need to be in a position to deliver quality infrastructure and open spaces not only for the public good but to attract the very people that developers are hoping will buy the properties that surround their development.

Lastly, we object to the Government's decision to tie reform of the rate peg to cater for population growth to reductions in infrastructure contributions. This move presents a concerning cost shift from developers to local governments and ratepayers and, ultimately, our communities. Allowing the Minister to make permanent mandatory directions to all councils about the timing of these payments is also a significant concern, removing councils' control of our finances and providing greater uncertainty about investment in New South Wales. This is a significant overreach of ministerial powers and will delay essential community infrastructure. Many councils across the State simply do not have the financial capacity to fund forward multiple infrastructure projects, and this proposal will shift cash flow problems from developers to councils.

It is premature to push forward with this legislation while so much of the reform agenda remains unknown. We ask the Committee to recommend that the New South Wales Government withdraw the bill until such time as more detail is known about supporting regulations and, indeed, until such time as the detail is put into the bill and able to be considered with parliamentary scrutiny. Additional modelling of the financial impacts is needed, although even this will not guarantee support for the bill, given it is subject to change. Further, we ask the Committee recommend that the New South Wales Government de-couple rates reforms from infrastructure contributions reform and provide a guarantee that councils and our communities will be no worse off by the New South Wales Government's infrastructure contributions reform agenda.

Mr CASUSCELLI: Western Sydney Regional Organisation of Councils [WSROC] commends the New South Wales Parliament for its initiative in reviewing the proposed bill. However, it is less inclined to commend the process to date that has been characterised by little to no consultation with the very stakeholders that best represent local communities. WSROC supports the Local Government NSW submission that highlights procedural deficiencies and a general lack of detail that we believe will contribute to poor outcomes for communities. For these reasons and our observation that opportunities to address longstanding issues are ignored, WSROC does not support the bill in its current form and strongly recommends a return to genuine consultation with local government.

To begin with, we would like to highlight that when considering infrastructure contribution schemes of any nature, we need to move from a financing approach that is essentially based on meeting the upfront costs of building the infrastructure to a model that addresses how infrastructure is funded over its entire life cycle. Perhaps I am going to be cheeky now and say that there are a number of elephants in the room when we start talking about infrastructure contributions and reform. I will talk about the two biggest elephants. The first one is that local government has an almost impossible task to raise enough funds to provide infrastructure at adequate scale and contemporary quality. The second is that councils are not just responsible for new growth areas but also long-established areas with historically deficient provision of social infrastructure. To complement the Local Government NSW evidence, I would like to focus on just four indicative issues—these are not comprehensive; they just give you a taste—that demonstrate the challenges to local government in funding infrastructure that I believe are not adequately addressed in the bill, either directly or indirectly.

It would be fair to state that emergency management infrastructure in New South Wales varies greatly in quality and levels of fitness for purpose. This is arguably driven mostly by a lack of adequate funding and an outdated policy framework that makes little sense. The State funds RFS facilities but councils fund SES facilities. There is a distinct lack of a coherent policy framework that brings some efficiency and logic as to how emergency management infrastructure is built, operated and maintained. For example, there has been protracted dialogue surrounding the issue of funding for the provision of and the maintenance of SES facilities being the responsibility of local government whilst funding for RFS is the responsibility of the State, although the RFS assets over which councils have absolutely no control are, under the fiction that is local government accounting in this State, council assets shown on its books.

It is in the interests of both State and local governments to ensure that optimum outcomes are achieved from limited resources. WSROC continues to advocate for quality RFS and SES facilities that are multipurpose with appropriate common administrative, logistic and client control arrangements, which are aligned to the current and planned development within our cities, to be adequately funded. I will move to extreme heat events and heatwaves, two of the greatest resilience challenges facing the Greater Sydney region, with critical impacts on community health, household budgets, economic productivity, infrastructure and the environment. While it has always been hot in western Sydney, temperatures in the west are increasing at twice the rate of the Sydney CBD. A key contributor is rapid urban development whose design exacerbates an already hot region. Fortunately, the urban heat island effect can be mitigated to an extent through good urban planning and design.

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In December 2018 WSROC launched its Turn Down the Heat Strategy, western Sydney's first region-wide, multi-sector approach to mitigating and adapting to heat. A significant portion of this strategy looks at changes to the way we plan and design new communities, including promotion of the use of cool materials, airflow, green space, water-sensitive urban design and infrastructure adaptivity. The use of heat refuges, air-conditioned public buildings, tree canopy cover and the use of water to mitigate increasing urban ambient temperatures are critical tools to maintain liveability in our cities. Infrastructure design and delivery that responds to the challenges of extreme heat and heatwave events increasingly falls to local government to provide, putting even greater pressure on councils' funding reserves.

Funding adequate levels of social infrastructure such as sports facilities, community centres, libraries and swimming pools is a major challenge for local government, particularly in rapidly growing areas such as western Sydney. These facilities are key to livable communities. However, councils' ability to attract funding under the existing arrangements, including rates, grants and developer contributions, is limited. For example, traditionally, developer section 7.11 contributions have been used to cover all necessary works such as roads, drainage, open space and community infrastructure. Unfortunately, the latest Government policies stipulate that if council wishes to charge more than \$30,000 per lot or dwelling in its contribution plans, it cannot include community and social infrastructure in those plans as they are considered non-essential under the essential works list. This has significant implications for the region's liveability as Sydney's new growth areas will miss out on social infrastructure that the established areas of Sydney have enjoyed since the Environment Planning and Assessment Act was introduced in 1979.

The cost of providing such infrastructure is significant. For example, the value of social infrastructure needed to accommodate growth in just the Blacktown local government area over the next 20 years, which is unfunded under the current arrangement, has been assessed at over \$500 million. It appears that infrastructure normally falling within the jurisdiction of the State Government i.e. roads, health facilities, education facilities, utilities and the like are generally, but arguably, adequately funded and receive adequate attention. What is more problematic is the funding of social infrastructure that delivers subregional or regional benefits. I will give an example—

The CHAIR: I am going to interrupt you there, recognising we have two more councils to hear opening statements from. I will ask you to please wind up. I am sorry to have to do this, but you will have to wind up your—

Mr CASUSCELLI: Two more sentences.

The CHAIR: You can also email your opening statement to the secretariat so that the Committee has it.

Mr CASUSCELLI: Let me just say this: I think there are aspects of the bill that could be supported by local government. I think there are some aspects to it that make sense, and we could reach an agreement or a consensus. We are committed to working with the State Government to shape the bill as something that would actually secure the broad support that would make this actually work for the communities that we serve.

The CHAIR: Thank you very much. I am so sorry to have to interrupt you there. We will move to the Riverina Joint Organisation. I will just check that one of you is going to give the opening statement. Mayor Rick Firman, I think you are on mute.

Mr FIRMAN: Thank you very much, Madam Chair. This is my maiden appearance before an inquiry, so thank you and the distinguished members of the Committee for your time and your patience with me. We welcome very warmly the opportunity to make a submission to the inquiry and to speak at the hearing but note that there was only nine business days between the inquiry's media release and the close of submissions—the entire time coinciding with school holidays when many council staff choose to take leave. These legislative amendments are significant. It also has been difficult to formulate a response without knowing more of the detail proposed that will only come through regulation. However, based on our understanding of the bill, our concerns are as follows. Point one: Since 2018 our members have been seeking changes to the current legislation, to require the Independent Planning Commission to impose 7.12 contributions on State-significant developments. This can be achieved by changing the wording in the Act from "may impose" to "must impose". We are extremely disappointed that this has not occurred.

Point two: The commission's failure to impose a condition is costing councils hundreds of thousands of dollars every year. We strongly believe that this is inequitable that State-significant developments are released from their obligation to pay the contribution given that they are being applied to all other developments where councils are the consent authority and have a contribution plan in place. These contributions are vitally important to councils as they provide a revenue stream that assists councils to maintain and renew community infrastructure,

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as you have heard from our State president, from Lord Mayor Moore and others. We are concerned about the increased powers that are being granted to the Minister that could significantly impact on our council revenue, particularly us, of course, in rural New South Wales. This includes provisions for the Minister to determine how and when contributions will be paid and also to delay the payment of contributions. These appear to be unfettered powers which have the potential to significantly impact on council revenue.

Point four: The bill includes changes to the way that contribution plans are prepared and approved. There appears to be no transition arrangements in place that would allow existing plans to remain lawful while new plans are being developed. This is likely to impact on council's ability to collect development contributions. Point five: The new regional infrastructure contributions fund is to replace the special infrastructure contributions, but in fact it goes beyond this because the requirement to pay will be contained in a State environmental planning policy, a SEPP, and SEPPs can cover any part of the State, including rural and regional New South Wales. As we understand it, there are currently 39 SEPPs enforced in New South Wales, covering everything from koala habitat to Sydney drinking water catchments. There is no indication of what SEPPs will require—the contribution. Point six: We are very concerned that the bill states:

A regional infrastructure contribution may be imposed to provide regional infrastructure outside the region or the State.

This means a contribution could be collected in Temora shire but spent in Byron Bay or even, apparently, outside of New South Wales. Communities expect, and not unreasonably, that development contributions from developments in their respective local government areas will be spent in their LGA. Point seven: In addition, there appears to be no guidelines as to how the RIC funds will be expended other than expenditure being required to have regard to relevant strategic plans. Point eight: We are left wondering, where there are multiple SEPPs impacting on development, whether the developer will be required to make a RIC contribution in relation to each SEPP.

Point nine: We question how the RIC will interact with existing legislation like the Biodiversity Conservation Act, where developers are required to pay for biodiversity offsets. Will they also be required to pay into the strategic biodiversity component of the fund if the development is impacted by a SEPP that requires an RIC payment? Lastly, we believe a lot more analysis of the impact of the RIC needs to be undertaken before it is legislated. We are therefore very strongly recommending to you and to your Committee that the implementation needs to be delayed. Our members firmly believe that there are far too many grey areas in relation to the bill and that it should be withdrawn until such a time when regulations can be formulated that shed more light on its operations.

The CHAIR: Thank you very much for that opening statement. We will move to Mr Donoghue from Coolamon shire. Just before you begin, I will remind all of the speakers who have spoken so far to mute their microphones while Mr Donoghue speaks.

Mr DONOGHUE: I am happy that what has been stated already by the Riverina Joint Organisation is acceptable as the opening statement.

The CHAIR: Good on you. We will move directly to questions. I will go to the Opposition first.

The Hon. ADAM SEARLE: My question is to Linda Scott but also to anybody who wants to answer it. Given the importance they will have in the scheme, should we not have had the draft regulations and the draft ministerial directions that will underpin this legislation provided at the same time as the legislation so that you as stakeholders, the community and Parliament can properly evaluate the totality of what the Government is proposing here by way of reform?

Ms SCOTT: That would have been extremely helpful but, indeed, it still may not have been enough to assure the local government sector of confidence in this bill. Really, what is needed is for those details to be in the bill so that if there are amendments to them by a future Minister or a future Government, the appropriate parliamentary scrutiny can be applied. What we are talking about here is the future of so much local infrastructure across the State. As you have heard, from Western Sydney to Temora, western New South Wales and all around the State there are concerns about this. What is needed is to give councils, those housing professionals who are building these kinds of infrastructure and making contributions, and communities certainty. The only way to do that, to give people certainty that things will not be changed with the flick of a pen and a regulation, is to put this material in the bill.

The Hon. ADAM SEARLE: Would making the ministerial directions and any—it would not be a SEPP but any kind of legislative instrument that would implement the regional infrastructure contributions and the other things that are currently missing, making those disallowable instruments, would that assuage some of the local government sector's concerns?

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Ms SCOTT: I guess the issue is that in the world of planning and development even a disallowable instrument may still not be able to change a contribution agreement that has been decided upon, thus potentially robbing communities of these contributions. So, whilst in most circumstances that might provide some comfort, the issue here is that because when a regulation is disallowed it is not able to be done so retrospectively—it means that window may have allowed contributions either not to be collected or to be collected not by local governments and therefore it may have a significant impact on a local community's ability to have a pool or footpaths or a park. So it really is critically important in this circumstance that those details be in the body of the bill.

The Hon. ADAM SEARLE: I am hearing you on that. There appears to be, I think, a reasonable consensus that not enough money has been invested in social and physical infrastructure to properly support the development that we have seen over the last decade or two across Sydney. Is it the assessment of the local government sector that this bill and all that it would entail will lead to the raising of more money for infrastructure or does it simply move the existing infrastructure spend from developers to landowners and local councils, for example? Will this lead to more infrastructure money being spent for communities or does it just move the existing pot of money around between different players?

Ms SCOTT: [Inaudible] answer to that. After ministerial directions and regulations are put on exhibition, that is no guarantee that they will apply under a future Minister or a future government. So it is of course the case that it is feasible that this bill, if passed under a certain set of circumstances, will lead to less contributions for developers and will therefore, of course, lead to less contributions from developers going towards paying for this important community infrastructure. There are a number of scenarios. You can imagine perhaps more of that funding will flow to the State Government or perhaps less will be charged overall. You have heard scenarios from across the State and you see more in the submissions that councils and regions of councils have made.

There are concerns, for example, that solar farm applications for large solar farms in western New South Wales—perhaps the government of the day takes a view they want to incentivise that in a certain region and so maybe contributions can only be triggered once the solar farm turns a profit, thus not providing certainty for the council about when that contribution will be provided. I note the Productivity Commissioner's comments this morning that his recommendations were based around the occupation certificate, but the regulations allow such freedom so as to not require that to be the case. So you can see the extraordinary uncertainty that we face. We do not know whether there will be any contributions. If there are contributions, we do not know when they will arrive or what the trigger for arrival will be. This is too much flexibility and therefore too much uncertainty for councils to make decisions and work with their communities about the local infrastructure that they need to provide.

The CHAIR: I just wanted to throw to other witnesses, if they wanted to also respond. Clover Moore, I see you have your hand up.

Ms MOORE: We currently have an effective and a transparent system where developer contributions are used by councils to provide community infrastructure in the areas where the development occurs. To move decisions to ministerial direction and regulation is not transparent. It is really going to undermine and emasculate a council's ability to provide community infrastructure in areas where it is needed and where development is occurring.

The Hon. ADAM SEARLE: My final question, for now, is probably to all of the members of the panel and I am happy for them to take this question on notice and provide this information subsequently. But I note, for example, there is an article in today's Herald raising concerns about the cost shifting to local government and the depriving of local government of resources to provide infrastructure if this legislation is passed, in the assessment of local government. Are you able to give the Committee some tangible examples of local infrastructure that you are currently able to provide under the existing regime which you are concerned will not be able to be provided by local government based on your understanding of the regime being proposed by the Government in this legislation—noting, of course, that important elements are currently not knowable? I note also that the IPART review on the rate pegging expansion is not due until September. I think that is right. Is it, Ms Scott?

The CHAIR: We will go to Ms Barone first. Then I might go to the regional councils after that, just to see if they wish to contribute.

Ms BARONE: I will just give a quick example: the Green Square urban renewal site. That will house, when it is completed, about 65,000 more people, and places for about 25,000 jobs. This is a retrospective example, just to give you an example. In order to support that huge growth in that community, the city will be putting in about \$1.3 billion worth of developments. Seventy-five per cent of that comes from developer contributions and 25 per cent already comes from the rate base. So the first thing that needs to be dispelled is this idea that the councils are not using the broad rate base to fund infrastructure, because no council ever gets enough money from the contributions to fund all the infrastructure. Now because of the lack of planning by other levels of government

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in that area, the city had to put its hand in its pocket and find over \$70 million just to put the trunk drain in that enabled the \$13 billion worth of development to occur. That is because another level of government did not plan for that infrastructure and did not, under their levying schemes, levy for that infrastructure.

At next week's council meeting, the City of Sydney is putting up a report where we are dedicating the stratum, at a cost of \$5 million, to the Department of Education so that the 65,000 people who live there will have a school. Because other levels of government did not plan, despite—this is one that I know very personally because 19 years ago I started working on infrastructure planning for Green Square and 19 years ago I met with the Department of Education and said, "Where are you going to put a school?" They said, "What would you know? We don't need one." They left it to the point where the council had to provide the land for the school because we could not, in good faith, allow a community of that size to be developed without that infrastructure. We do not know what is intended here. We do not really know what the intent is here—how much we would lose. But let us assume we lose 50 per cent. If we had lost 50 per cent of that contribution, that would be a very, very different community. They would not have a school. They would not have an aquatic centre. They would not have the sports fields that we are developing. They would not have a library.

Mrs BRIGGS: To echo, I guess, what Ms Barone is saying, the dilemma here is we just do not exactly know how much we are going to lose. In a regional area one of the things that we are concerned about is that once the RIC comes in and it is mandatory, even if it is not in the consent conditions the bill provides, it will apply regardless. I think that is going to put a lot of rural and regional councils into a difficult situation with the developers who come to them and say, "Well, I've got to pay the RIC, so what are you going to do about the 7.11 and 7.12 contributions? Because they're not mandatory. So if I want to come and build in your rural or regional area and I want to develop here, I need council to start handing me discounts on the other contributions because I'm paying money to the State." That happens now for councils, on top of the fact that most of the developments in rural and regional councils are affected by the biodiversity conservation offsets.

Most of our councils are put under pressure to lower those kinds of contributions to encourage economic development, so we see that we are being put under additional pressure because of that. Our concern is that that developer money that is paid by the RIC will not be coming back to that LGA. There are no guidelines indicating that—only that they can spend it anywhere in the State. Our communities are going to see big developments like solar farms happening on their back doorsteps and no economic advantage will be coming to the council by way of contributions, which we use, just like the City of Sydney, for pools, halls, public facilities. And unlike the City of Sydney, our councils have much smaller rate bases to draw on, so the developer contributions are much more impactful for those communities and losing that will cause us significant hardship.

The CHAIR: Thank you, Mrs Briggs. I am afraid we will have to keep moving in terms of questions. I will throw to some of the witnesses who have not answered questions if I am able.

The Hon. MARK LATHAM: Thank you to each of the witnesses. I wanted to go to the City of Sydney submission, which I thought on page 4 had a really useful summary of the deficiencies of this proposed legislation. To the Lord Mayor or Ms Barone from the council, I am puzzled by what you have said about the changes to section 7.12 contributions and the impact on your council and other inner-ring type of councils with commercial areas. Then I go to page 12. Am I assuming here that your objection is certainly not to say that the 1 per cent levy should not go to 3 per cent, but more that it does not capture renovations of non-residential space and that it only captures developments where there is an actual increase in the floor space? If that is the problem, how do we bring the renovations into the net?

Ms MOORE: I am happy for Ms Barone to respond to that, but councils need money for a range of things, not only to provide community facilities that are needed in accordance with new developments but also the backlog of existing facilities that need to be restored, repaired and renovated. Councils are the one in the position to see what is needed for the community in their local area. These contributions are absolutely essential for councils to be able to perform their job. Removing that money and increasing rates I think is a really shocking proposal.

The Hon. MARK LATHAM: Ms Barone, how can we amend this bill to bring in the renovations? Do you want a 3 per cent levy on the value of all development applications? Is that what you are saying?

Ms BARONE: This bill does not do any of these things. This bill just sets up the conditions for these things to then be set. Because we do not know what is being contemplated, we cannot support the bill. But I think to that point—and I think the submission does clearly explain it—one of the things we do not want presumed is that when you refurbish a building you may not add floor space but you may add intensity. So you might go from an office floor space to a food hall that attracts people day and night and therefore that intensity of use requires different types of infrastructure: more footpaths, more lighting, those sorts of things. You cannot presume that floor space equates to intensity. That is the point we are making. But yes, of course, as the Lord Mayor pointed

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out, our forecasts are—we currently have 1.3 million people a day in the city. Those are the people we serve. It is 1.3 million people a day.

The point I often make is, when you pick up the garbage in a residential area, mostly we pick it up once a week. When you pick it up in the city, it is three times a day. The lights are on day and night. The footpaths have to take 1.3 million people. By 2036 that will be 1.7 million people and by 2050 that will be two million people a day, notwithstanding COVID and the impacts of COVID. That is how fast we are growing and that is just the commercial core. The kind of infrastructure you need to accommodate that kind of intensity is enormous. If we are not generating that money from that development then we do not have the capability to upgrade and continue to add to that infrastructure.

Mr CASUSCELLI: My apologies for the delay. Can I make a suggestion to the Committee? Notwithstanding that we have had a very limited period of time to look at this bill and do some analysis in terms of the real impact to local government, Dr Meg Montgomery, the Executive Director of the Northern Sydney Regional Organisation of Councils, has done some fabulous work in this area. They have been able to pretty much quantify what the real impact to its member councils will be, projecting out a number of decades and using real data. She shared that with me and I thought the analysis that was done and the way they did it gave it eminent credibility. If the Committee would like to have a reasonable handle on local government's assessment on the impact of the bill to real revenues to local government, you could reach out to Dr Meg. I am sure at some point in time they are going to approach the Parliament or Ministers to try and put forward their analysis.

I think, in summary, it does not paint as rosy a picture in terms of impacts to local government as the Minister's media release makes out. I am not sure whether Meg is going to kill me for suggesting this, but I think if you reach out to her she will actually make that work available to the Committee.

The CHAIR: That is very important. We might just do that.

The Hon. BEN FRANKLIN: Mrs Briggs, thank you for being here. I was a bit concerned about your evidence, but I do believe the Government has accepted the NSW Productivity Commissioner's recommendation that RICs only apply to metro areas. Hopefully that gives you some level of comfort. What I particularly wanted to ask about is in terms of solar farms. I am trying to drill down exactly the concern. Is one of your concerns, for example, with something like the solar farm project in your region, that you will get a prompt outcome to how the solar farms are levied under section 7.12 contributions and that you want some certainty in that space? I would have thought that is critical, but maybe you could make some comments about that.

Mrs BRIGGS: Can I address the first one about the RIC? This goes to what Councillor Scott was saying before. The bill does not restrict it to any regions at all. It says that if it is in a SEPP then it is there. This goes to the grey area. I read the bill and it gives me no confidence that it will only be where the six are now.

The Hon. BEN FRANKLIN: So your recommendation would be specifically that we should make it clear in the bill that it must not apply in regional areas?

Mrs BRIGGS: Yes, absolutely. As it sits now, it does. With the solar farms—and I am loath to single out solar farms—our problem has been the State significant developments that go to the independent panel. What has been happening is that the panel does not apply the 7.12 contributions even where the council has the contributions plan in place for 7.12. This has really come to the fore for us because of the size of the solar farm developments in our regions. In the Riverina-Murray there will be something like almost five million solar panels deployed over the next five years. Those are some pretty big developments. Out of those, our councils are not getting the 7.12 flat 1 per cent contribution. They are missing out on that benefit. That can be solved. We have had a number of discussions with the planning Minister. It was his suggestion that it could be solved by changing the wording from "may impose" to "must impose".

We have an added dilemma in this, which is that there seems to be a point of view that councils can negotiate a voluntary planning agreement [VPA] with these big developers, which they can. But the problem with that is that the VPA needs to be negotiated before it goes to the planning panel. It gives the developer a feeling that council is supporting it and that, you know, if I pay enough money to council, then they will provide support for that. It is a bag of money before the development is approved. It is just a really bad look and in some of our councils it has created expectations that were unrealistic from the developer's perspective.

We think that the wording should be changed to "must impose" and this goes a bit to the bill again. The bill provides the Minister with the ability to say how and when levies could be paid. We have councils now that are more than willing to negotiate when RIC contributions are paid and that reflect the development's progress and milestones and things like that. We think that that should remain within the province of the councils, reflecting what the situations are, and that this should not be something that the Minister decides for a council.

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The Hon. BEN FRANKLIN: Thank you so much, Mrs Brigg. Could I just ask a question to Councillor Moore, please? Lord Mayor, I was very concerned about the concern you expressed that your contributions would be halved and would have a substantial impact on the city, and so on. I was wondering if you might be able to share with us any of the modelling or assumptions that underpinned that conclusion because it is obviously very concerning.

Ms MOORE: It is, and I have taken advice. As we all know, we have had absolutely minimum time to pore over this and have minimum information.

The Hon. BEN FRANKLIN: Yes.

Ms MOORE: But that is the best advice I am getting from our financial staff that that would be the impact, but we do not know for sure. We are just surmising from the information that our staff have in assessing and preparing the submission. We are surmising that our contributions might be halved and what that impact would have on the global city and the ability of the global city to maintain its economic activity.

The Hon. BEN FRANKLIN: I just thought that if there was any modelling or assumptions, it might be helpful for us and the Committee to look at, that is all.

Ms MOORE: I will get sent through to the Committee what information is available from our staff.

The Hon. BEN FRANKLIN: That would be lovely. Thank you, Lord Mayor.

Ms MOORE: I will do that today.

The CHAIR: Thank you. The Hon. Rose Jackson, do you have questions for the panel?

The Hon. ROSE JACKSON: I would just ask one question. I am not sure if people heard the evidence from the Productivity Commissioner prior to this panel, but I asked him a question in relation to the Independent Pricing and Regulatory Tribunal [IPART] review of rate pegging. He identified the changes to rate pegging to accommodate population growth as a kind of core plank of this suite of reforms. But, of course, the mechanics and the detail of that are before the IPART. Does anyone on the panel have any view about how confident they are that the Berejiklian Government will fully accept the IPART's recommendations, or has anyone got a sense of the Government's view on that? I ask because it seems to be a significant part of the reform package that we do not have the detail on yet.

Ms MOORE: I do not think that anyone has the detail and I think that is the problem.

Ms SCOTT: I might address that, Ms Jackson, by just saying that I note that the Productivity Commissioner did agree, as has been given in various bits of evidence from various councils, that these models rely on rates growth but IPART separates growth that is needed over and above infrastructure contributions. So the Productivity Commissioner and IPART both agree that independently of this rates growth is needed for councils to support our communities. The history of rate pegging in New South Wales has had a significant impact on councils' ability to fund jobs and infrastructure in contrast to other States and Territories around the nation. The Productivity Commissioner's recommendation to undo rates capping in New South Wales was not adopted by the Government. That is very, very clear.

This should be seen as a package. The conditions for these contributions reforms are not yet made because the rest of the Productivity Commissioner's recommendations have not yet been adopted. So this is a one-sided approach that risks letting developers off the hook at the expense of communities and still does not resolve the financial needs of councils to support infrastructure. This is the risk of a lose-lose-lose scenario. It is not the scenario that the Productivity Commissioner put forward for the State Government to adopt as a whole.

The CHAIR: I just want to check with some of the witnesses now. Mr Donoghue, would you like to comment on any of the questions or the previous question that has just been put?

Mr DONOGHUE: No. I am quite happy with a statement that I have no idea what the Berejiklian Government is going to do with that. It is our council's concerns that we have a very limited rate basis. We have infrastructure provisions, even though we are a very small council compared to the City of Sydney. But with restrictive budgets, our development is aspirational. We try to aspire to have development and any restriction of that aspirational development is negative towards our rural and regional areas. Without the detail in the legislation being provided or discussed, we are very wary of any approach that reduces that.

The CHAIR: Thank you. I know we have had very limited time but I think we are out of time.

The Hon. ADAM SEARLE: I think Ms Barone has something to say.

The CHAIR: Sorry. Yes, thank you. Ms Barone?

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Ms BARONE: May I just very quickly comment? I just wanted to make another point on something that has not been raised and that is this issue of contributions being paid at the occupation certificate point rather than at the construction certificate point. I take on board what Mrs Briggs said: That for some councils the timing of the contributions can be different, but one of the things we are very concerned about is this—and we are already starting to see and have some concerns about this. There was a holiday given during COVID that allowed developers to make their contributions at occupation certificate but what is intended here and what is being contemplated here is that that continues.

There are two issues. The first, of course, is that the infrastructure money is meant to come so that you can build the infrastructure at the same time as the development because you need it at the same time as the development. But the other thing that we are really concerned about is delinquency. The building is finished and the certifier certifies it—we all know the problems that we have got there already—the company folds, the contributions are not made. Then you have got councils spending, again, sending lawyers after contributions that were never delivered. We think this is a really big problem and we do really want to go back to the way that it was. Thank you.

The CHAIR: That is a good point to make at the end of our session. I am sorry that we are out of time but I would like to thank you all for making the time to appear today and for your excellent submissions. Some of you may have taken some questions on notice in terms of providing modelling, so the secretariat will be in contact with you regarding that. Thank you very much for appearing.

(The witnesses withdrew.)

(Short adjournment)

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JOHN ENGELER, Chief Executive Officer, Shelter NSW, affirmed and examined

CATHY CALLAGHAN, Senior Policy Officer, Shelter NSW, affirmed and examined

The CHAIR: Welcome back to the hearing for our next session. We are waiting on Mr John Engeler to join us. Ms Callaghan, do you have an opening statement?

Ms CALLAGHAN: I do, which Mr Engeler was going to make.

The CHAIR: Do you have that opening statement in front of you? Would you be prepared to make it?

Ms CALLAGHAN: Sure, I can do that.

The CHAIR: Thank you very much.

Ms CALLAGHAN: I acknowledge that I am calling to this inquiry from Wangal country. Thanks to the honourable members of the Committee and to the Committee staff for their help and guidance. We would like to acknowledge the work of Ryan Harris and Professor Bill Randolph from the City Futures Research Centre at New South Wales uni, who helped us prepare for this hearing. At Shelter NSW we are concerned about housing affordability, particularly for the lowest 40 per cent of income earners who, in the main, because of the long-term affordability crisis, are renters across the State. While we have a high focus of concern about the serious lack of social housing, our concern increasingly extends into a concern for ordinary people—key workers, much in the news—who are suffering housing stress across Greater Sydney and increasingly in cities like Wollongong.

It is our firm view, backed up by research, that the private housing market continues to fail a large part of the population. So until and unless the private housing market is fundamentally changed, we and many advocates like the NSW Council of Social Service [NCOSS], the Tenants' Union, Homelessness NSW, Sydney Alliance and academic experts advocate that a non-market alternative in the form of affordable rental housing ought to be considered important infrastructure, funded through an efficient and effective infrastructure contribution system. This is part of a broader position we have, that the value created out of development and planning decisions ought to be shared with the public for the public good.

Our interest in this bill stems from our involvement in the focus group that the Productivity Commissioner organised last year. We understand that the commission was asked by the Minister for planning to determine whether the system met the principles of certainty and efficiency. As you know, he found that the current system does not provide adequate levels of funding to pay for the infrastructure that is necessary to support development and, further, that the current system is too complex, inefficient and inconsistent. We agree with that overall view. We also share the concern of the commissioner about infrastructure contribution plans being implemented after rezoning decisions are made. So we support any recommendations and legislative change to address that.

But here is what worry us: While it is true that the proposed bill does not change powers and processes for the levying of development to support affordable rental housing, we think the commission's report has set up a worrying platform for any future review. In so narrowly defining "infrastructure" for which contributions ought to be collected, we believe the commissioner has made a point of principle that affordable rental housing contributions do not belong in the future system. We are pleased to see the commissioner call for a review, but we are concerned about the direction and ask that further detail be provided. A key question for us is why was the issue of levying for affordable rental housing not explicitly dealt with during the commissioner's review? And how can this bill proceed without this being clarified?

We ask the Committee to test the assumption that this particular legislative reform will make housing more affordable across New South Wales. Where is the research to support that? We call on the Government to fast-track the comprehensive review of the existing State Government mechanisms for delivering affordable rental housing in order to strengthen the system, not kill it. We would include in that the Greater Sydney Commission targets and schemes managed by councils. There are other things we could talk about. I could elaborate further on what I have just said. We could talk about affordable rental housing for key workers. We have got some examples of what concerns us about the current system.

The Hon. ROSE JACKSON: Thank you, Ms Callaghan, for coming along. You made a reference in your opening statement to the other review that is going on in relation to affordable housing options under the planning system, and you indicated that you thought it would be better if it was fast-tracked. What is the current time frame on that? Do you have any sense of where that is currently up to and when finance may be available?

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Ms CALLAGHAN: No, I am not. I am aware that it was recommended by the commissioner through the commissioner's report. I believe the Government agreed that a review would be undertaken, but I am not aware of any time frames.

The Hon. ROSE JACKSON: My understanding was that the Government broadly accepted all the recommendations and so therefore accepted that one about the review. Are you aware if it has even commenced at all?

Ms CALLAGHAN: Not to my knowledge. It is something that we would look out for because we are acutely interested in it.

The Hon. ROSE JACKSON: Yes. I would imagine if it was on foot, you would know about it probably.

Ms CALLAGHAN: Yes. No, I am not aware of any time frames.

The Hon. ROSE JACKSON: The reason I ask that is because there are a number of elements of the whole package, as we will call it, whether it is the affordable housing review, whether it is the IPART review into rate pegging. There are a number of elements that are still outstanding in a way. It has been suggested by the witnesses that without that information, it is difficult to get a sense of what the overall package is really going to look like and how it is really going to work. Would you agree with that? Is that why you think having that other review completed is very important?

Ms CALLAGHAN: Yes, we think it is very important. This particular bill does not explicitly amend the current system of housing contributions' past gains. But you would accept that the commission has done an extensive review and fairly explicitly stripped back the definition of what is infrastructure. I am getting a lot of feedback here, so I hope you can hear me.

The Hon. ROSE JACKSON: Sorry, that is me. I am supposed to press mute when I stop asking you a question but I forget, so apologies to Hansard and the secretariat as well.

Ms CALLAGHAN: We note that the words "affordable housing" are noted within the proposed bill, but we do not think it is enough to just have the words in the bill. We would seek assurances that those words translate into meaningful contribution schemes and that the actual distribution of any contributions that are collected do actually make their way into delivery of affordable housing of which the State has a credible shortage. We are concerned about the lack of detail, and you wonder what the purpose of the review would be. We are looking forward to the review. We welcome it, but we hope that the purpose of the review would be to strengthen the system and secure consistent funding for rental housing not run by the—

The CHAIR: Ms Callaghan, I will just interrupt you. Mr Engeler has joined us via video. Ms Callaghan kindly made an opening statement at the beginning and we have proceeded to questions from members. Do you wish to make a statement other than that which Ms Callaghan has already made?

Mr ENGELER: No. I am very happy with the statement already prepared by Ms Callaghan. She has done the lion's share of the work. It is well and good that she did what she presented.

The Hon. ROSE JACKSON: This question is to either Ms Callaghan or Mr Engeler. Ms Callaghan, you mentioned that you are looking for greater assurances that contributions collected would be dedicated to increasing affordable housing stock. What might some of those assurances look like? If we were looking to make recommendations to beef up the kind of assurances that were in there, what types of things might you have in mind that would give you some more of the assurance you are looking for?

Ms CALLAGHAN: For example, the draft bill talks about the regional infrastructure contribution schemes and it mentions affordable housing; it notes that it is there. The current assurance I suppose is where is the detail? Do you think that there will be many pages of regulations to back this up? We understand that while the contributions could be used for affordable rental housing, how would they actually be distributed within the rental systems? We note that the review of the Government response to that is that any revenue that is to be expended will be in accordance with the New South Wales budget process on advice from Infrastructure NSW with input from Treasury and the Department of Planning. There are a lot of departments that have a role to play in designing the mechanisms from which contributions are actually distributed. We would seek assurances that a sufficient portion of funds that are collected are allocated for affordable renting housing purposes. But that is in the detail, which I suppose we are speculating. We are mostly relatively concerned that there is not detail there to assure us that that would actually happen.

The Hon. ROSE JACKSON: Perhaps something along the lines of an actual percentage requirement. Is that something that would address some of your concerns?

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Ms CALLAGHAN: That would be helpful because currently all that there is is a theoretical—there are a couple of words in the proposed bill. Certainly a percentage would be one way to do it. But we would generally say that there is a substantial gap in affordable housing across the entire State; the demand is huge. Obviously the question of who and how it is funded is a big one and it is not to be ignored, but we do not think it is enough to simply identify it in the legislation, noting that the commissioner has already identified that something like affordable rental housing could likely sit outside what you would regard as infrastructure. That is what I suppose has seeded our concern. If the spirit of what the commissioner has recommended flows through into regulations, we may see very little funds being delivered for affordable rental housing.

The Hon. ROSE JACKSON: One of the concerns that we have heard raised, particularly from local government, is that narrowing of what facilities could be funded through the infrastructure contributions that are collected. They have identified things like cultural facilities, sporting facilities and those sorts of things. How important are those kind of amenities to making communities livable? When you are putting growth in, when you are putting affordable housing in, when you are building these types of growth communities where there is new housing going in including affordable housing, how essential is it that those amenities are made available to make those communities livable and make them a success, make them work I suppose?

Ms CALLAGHAN: It is very critical, particularly if you look at the housing targets assigned to councils right across Greater Sydney and increasingly in big regional centres. They are very dense populations. A lot of the density relies on ample community facilities. There are a lot of admirable goals in the State Government's plans around greening the city. Greening directly requires space. Walkable cities—all of these goals are very worthy, but they require space and space is on the grounds expensive and it needs to be paid for. We would say they are very important, and if you are talking about human densities, probably even more important than in previous generations. I will see if Mr Engeler has got anything.

Mr ENGELER: I will just add that we know retrospectively what it looks like when such infrastructure is not provided and what communities that do not have it look like and, indeed, I think using recent examples around schools infrastructure, how expensive it is to go back and almost retrospectively get blocks of land in the inner city to build schools on them. I think we have had to go from broadacre to high-rise school buildings, which in effect exemplifies what happens when you do not get infrastructure right at the planning stage. It is very expensive for the Government to get it retrospectively.

The Hon. MARK LATHAM: Thank you, Ms Callaghan and Mr Engeler. To either of you, it seems to me with these regional infrastructure contributions that the Government is trying to create a new revenue base in the State budget. But for social housing and all the other purposes—transport and so forth—there appears to be no guarantee that it will not lead to reduced effort from the general budget and that there will be a clear substitution. You might get to the point where there is less government funding for affordable housing because they will say, "We have got this new RIC in place that collects the money for affordable housing and that will do the job out of general budget." There is some of its asset recycling and it does not need to do anything else. That has got to be a potential problem, hasn't it?

Ms CALLAGHAN: Definitely. We have not really touched on social housing in this. We are just looking at a smaller portion around affordable rental housing. I think that is a very astute observation. We are already advocating that the general budget seeks to do—there needs to be a lot more work done on social housing. We are just trying to claw out some funding here for probably a different part of the population which are working people, key workers, essential workers, and we have not really addressed the gaping hole for social housing. I think that is a good observation.

The Hon. MARK LATHAM: I think on the other side of the ledger there is an issue about whether affordable housing is best placed in these regional infrastructure contributions. Do you agree there has got to be an element of hypothecation here? The costs of these contributions are inevitably passed on to homebuyers. If you are raising a RIC in Ryde, for instance, to provide affordable housing in Parramatta, people will be saying, "Well, what's that got to do with me? My immediate needs in Ryde here are transport access to get in and out of my suburb, my LGA." I am a big supporter of investment in social housing and doing it a lot better, but there is going to be an hypothecation question here, isn't there, as to the relevance of a regional contribution for this as opposed to a local one where it can be argued that there is a spillover social benefit from having affordability in your community?

Mr ENGELER: Thanks for your question. What comes to mind automatically is if only we could so easily distinguish between discrete areas and have the LGA boundaries. I think, if nothing, this week has shown us how difficult that is. A quick story that comes to mind is watching all the key workers who work at the airport at the moment who might have to catch the one single public bus that goes there from, say, Campsie—the 400 bus. There is no discount provided to these people to use the private rail transport to get to the airport. Indeed, you

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either struggle to get on the 400 bus at six o'clock in the morning if you are one of the baggage handlers, like everyone else in a hi-vis vest, or you get off at Mascot because you don't pay the levy.

I think this idea that somehow people live and work in the one discrete area is worthy of pulling apart. The people of Ryde benefit by the people in, for example, Campsie who tend to them when they are at the airport and vice versa. It is not as easily able to be unpacked as a discrete set of towns or villages. The same thing would apply—there are people who travel great distances between Newcastle and Central Coast or the Blue Mountains and Sydney. I think this idea that people live and work in exactly the same place, particularly key workers or essential workers, is worthy of unpicking, and it lends weight to that point you are making.

The Hon. MARK LATHAM: That is a valid counterargument. Finally, an industry representative put to me the argument about affordable housing in the RIC that it is like taxing the baker because there is a bread shortage. Do you agree with that analysis?

Mr ENGELER: I will think about that. I am catching up with you. What I will say just generally, unlike theory and hypothecation and all that, what we do have in New South Wales, if we can make this point, if it has not otherwise been touched on—my apologies, I know Ms Callaghan would have made mention of it as part of the brief introduction. One of the good growth generation stories of the last 25 or 30 years in New South Wales has been the growth of the community housing sector. They do great things. Actually, we see the question often, particularly at the moment when we are struggling with this idea of a re-enamorment with the regional areas. Good organisations and good towns that have a good community housing organisation have very successful housing diversity and housing needs met.

We see the community housing sector as the already proven—after 25 or 30 years, they are good operators. They are great operators of affordable housing. When we are talking about the theory about it, whether it is the baker's dozen or whatever, we actually know what good looks like when community housing organisations provide it and provide it well. This is affordable housing we are talking about—housing for essential cleaners, check-out operators and carers. We know already what it looks like. In some ways, this is not a theoretical discussion about whether or not this social infrastructure could work; it already works. We have seen it work well. The growth and the capacity building of the community housing sector in the last 25 or 30 years is evidence of who would deliver such leveraged infrastructure, providing affordable housing through such schemes.

Ms CALLAGHAN: But to your point, we would say that there is a lot of money and a lot of, in a property context, value being created out of development flowing from rezoning decisions right across Sydney. A lot of the local communities do not like it. They do not like the density and the congestion. If there is value and there is money being created, why should the public not get a cut of that? Why should the public not get some value clawed back? That is a counterargument to the baker. If that baker benefits from a government decision that suddenly decides to promote bread and more bread and they make more money out of it—if you want to use that baker analogy, I would say that would be the alternative—why would the general public not deserve some clawing back of value and sharing of it?

The Hon. SHAYNE MALLARD: Thank you both for your submission today. Affordable housing is one of the greatest challenges we have in our city, frankly—even more so than congestion and accessibility. Is it your understanding that this legislation—and I have got to admit that I have been involved with it only since it has come into Parliament in the budget process. It is incredibly complex. I have got 12 years as a councillor and I am still getting my head around what has been changed. I appreciate the inquiry today. Do you think it is looking to set aside the existing affordable housing levies and SEPPs and so forth? Because there are a whole lot of different ones in the development marketplace at the moment.

Ms CALLAGHAN: The Productivity Commissioner's review very explicitly, I suppose, kicked the can down the road around affordable housing levies. But in defining infrastructure that ought to attract levies, it really brought it back to a very contentious view—what does the developer need in order for the development to continue? Sewers, yes; parks, a question mark; affordable housing, no. So we are more concerned about the direction that has been set by the Productivity Commissioner's report and the Government's position on that. This proposed bill, noting that there is very little detail in any reading of the bill, a lot of changing of words and replacing—it is hard to read. With no further information to convince us otherwise, it has set up a level of concern in our mind about what a future review might be tasked to do.

We are all for a review if it is about unpicking the current system when it is something that the Greater Sydney Commission—we were delighted to see, in 2018, goals set for affordable housing and new developments and new residential floor space. But the reality is, first of all, it is very hard to know how it has worked because very little data is collected and it is not transparent. Many councils complain about how complex and difficult it is to get their council schemes approved by government. We would be delighted to see those things looked at and

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unpicked. But if the purpose of a review was essentially to dismantle the system, we will fight that tooth and nail unless there is some other plan or some other source of revenue that we do not know about.

The Hon. SHAYNE MALLARD: Simplifying the system for all parties involved—your people and your organisations, the councils, the State planners and the development industry—would be a positive thing. I guess the devil is in the details is what you are telling us here.

Ms CALLAGHAN: Correct.

The Hon. SHAYNE MALLARD: The second thing I wanted to ask you is—and we touched on it in the council session earlier today and in my experience at the City of Sydney as well—do you support the dedication of the departments or dedication of land by developers as an option when it comes to social infrastructure?

Mr ENGELER: I have worked in systems where it can be the in kind, the amount of money or the land itself as opposed to the units. I think that all three systems work, but I think the general discussions we had here yesterday or the day before around it, land seems to be the one least-complicated method of being able to do it. It is not the easiest in terms of the developer; they would rather just cut the cheque. But the idea where there has been some great development, the community housing organisations again have been given a dedicated piece of land, have developed the affordable housing and have been able to, rather than just having 20 units that look like the other eight in the development, design and deliver those in a way which responds to the particular need of their residents. I do think that the better preference would be, notwithstanding any other reason not to—a dedicated piece of land certainly is very attractive. It allows community housing organisations who have geared up well and truly and have got the development capacity and proven runs on the board to do this even more. They are a viable part of the system.

The Hon. BEN FRANKLIN: Thank you both for being here today. Obviously, if we are wanting to look at an increased uptake of social and affordable housing, clearly supply is a critical part of that. The Productivity Commissioner, for example, suggests in his submission that the payment of contributions being delayed from the construction certificate phase to the occupation certificate phase will actually remove barriers to small developers coming into the market and encourage new housing supply. I was just wondering if you have any comments about that and about that particular aspect?

Mr ENGELER: Am I right? Is it 10 million that is the cut-off point between which the recommendation—I think it was 10 million.

The Hon. BEN FRANKLIN: I think so but I am still getting my head around it.

Mr ENGELER: Yes, I am the same. Generally, we would support not delaying. That gives the work a certainty, efficiency and effectiveness. It is good for the council, or whoever the body is that is holding those contributions, to have them sooner rather than later. Ultimately, we talked again in the office just in the last few days about how, if you are going to have it paid for in advance, there might be some sort of mechanism that rewards that and says that, if they are paid for upfront at the DA stage rather than the construction certificate stage or the occupancy certificate, you pay a little bit more for that. I think the development industry's argument is that it is a lot of money to have out that they have to take out loans for to cover and that that is why there has been some reticence to it.

But if we are going to argue certainty and predictability then it works on both sides of the ledger. The body holding the contribution funds likes to have it soon as well so that they can also plan what particular pieces of infrastructure are going to be targeted with those moneys. We would support earlier rather than later. I do not think money has ever been cheaper, to use that argument and say that somehow the holding costs or the interest costs that would be borne by large or small developers are such that it would be necessarily inhibitive of a number of units that would be delivered on the site. I do not think that is necessarily true.

The Hon. BEN FRANKLIN: Understood. [Inaudible].

The CHAIR: Sorry, Ben. I am just going to come in. I think your connection is not great. Possibly just repeat what you were saying with your video off.

The Hon. BEN FRANKLIN: Can you hear me better now?

The CHAIR: Yes.

The Hon. BEN FRANKLIN: Just a follow-up question then, Mr Engeler. Do you have any other comments about effective ways that—obviously through this bill but even more broadly—new housing supply can be unlocked?

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Mr ENGELER: We have got a number of ways that we would suggest. I think the main couple of things—

The Hon. BEN FRANKLIN: Obviously keep focused on where we are going with this specific bill.

Mr ENGELER: I think it is worth noting that we generally agree that affordable housing is something that is reasonably able to be expected, leveraged and produced using the development industry and planning at the moment. I think we would all agree that social housing as a discrete thing is government's responsibility. But we would generally support the idea, if you wanted to look at a natural—given the level of housing stress and the ability for more and more people to rent units for long periods, I think the development industry generally is capable of being able to help leverage and deliver certain amounts of affordable housing. I think that is the general premise.

My general comment would be, whether it is this bill or others, it is reasonable—we are not talking about social housing here. We are not talking about how the Government can get money to provide accommodation to people on statutory incomes at 30 per cent of a low income. We are talking about 75 per cent of the market rental for areas of people who are working if for no other reason than to help promote them through that system towards home ownership. It seems to us to often be a bit of a failure of policy that social housing—and you could talk all day about whether it is the right thing or what ills might otherwise come with it and private rental. Surely affordable housing should get a tick in the box for being the thing that everyone generally agrees on. It is not as contentious. It is relatively straightforward.

People know, especially this week, what an essential cleaner, caretaker or check-out operator is. I do not understand why the planning system should not be the natural font to which this extra subsidy—because that is what we are talking about here. Where is the subsidy that would make this happen when it would not otherwise? I think that, with the uplifted value of zoning, planning, development and the property boom that is happening, it is right and reasonable to expect that some of that private reward is converted to what is an obvious nexus—to use that overused word here—public good, in the form of affordable housing for key workers.

Ms CALLAGHAN: Mr Engeler, if could I just add, if we are talking about increasing supply of affordable housing, let's not forget that the New South Wales Government is a massive property developer in its own right so we would love any review to also look at the extent to which the State Government is delivering on its own strategic commitments around the delivery of affordable rental housing. For example, if we look at the Pymont-Blackwattle Bay proposal and further around Pymont you would expect to see the Government pushing harder and doing more than the minimum of the Greater Sydney Commission's 5 to 10 per cent target for residential areas. But the draft says that the appropriate monetary contribution rate for Blackwattle Bay is yet to be determined and will need to be balanced with the overall contribution towards other public amenities and services. It does not give us any joy to see the Government as a property developer with public land not leading the way on dramatically increasing the supply of affordable rental housing.

The Hon. ADAM SEARLE: The affordable housing discussion we have been having seems to really focus on affordable housing in terms of rental. If we are talking about promoting new supply, there seems to me to be a missing part of the discussion, which is the supply of houses or housing for purchase for people to actually own that is actually affordable as well, and why shouldn't policy settings also be directed at assuring that there is a segment of the market where people who want to actually own their own home can meaningfully purchase. I ask this because I think until the late eighties what is now Landcom used to do land and housing packages for people, particularly in west and south-western Sydney, who were working people but for one reason or another—because the interest rates were higher then—could not get a loan to buy their own home.

There does seem to me, when I used to have the Housing portfolio and when I had Planning, that there are people who are working, who are earning not bad money and who are saving some money that still cannot afford to buy a house. They do not want to necessarily have to rent for the rest of their lives. Is there not a missing part of this discussion around affordable housing for purchase?

Ms CALLAGHAN: I think so. If you look at the Act, it talks about encouraging affordable housing. It does not define that it is rental or for purchase. I think it is just by necessity that we have ended up focusing on rentals. 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. So I think you are right, Mr Searle. I think considerations of ways to help working people on ordinary incomes make their way into the housing market without inflating the housing market should certainly be considered.

The only reason we focus primarily on renters is that the problem is so acute. The same research says there are only a few LGAs in Sydney where there is even affordable rent for the same early career registered

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nurses. I think just by necessity our fellow advocate organisations focus on renters just because the idea of purchasing property is almost a pipedream for so many people.

Mr ENGELER: I might just add there, Mr Searle, for what it is worth you are absolutely right. Housing affordability and housing stress, whether it is 30 per cent of your rental or it is going towards a mortgage—but at the end of the day we have noticed, and Ms Callaghan is absolutely right, the correlation here is really around renters. The size of the private rental market, despite a recent return back to more home ownership, has grown consistently. I think we reached a high of about 72 per cent in the late seventies or eighties. Every year it winds back a bit and that bigger percentage of the market that is housing is made up of renters and long-term renters who rent for long periods with children in units and apartment buildings.

It is almost like we are getting to a tenure distinction here between people owning properties that are detached cottages or a bit smaller ones—and in fact Landcom still has a role to play in levelling out literally the infrastructure costs and making it cheaper for those houses to be provided. So we recognise that the ancillary works associated with making housing cheaper through infrastructure are already provided by the State. It does that already. In some ways, it already does that. What we are saying is it needs to extend that same not largesse, but that same understanding that there is ancillary infrastructure to that which will be occupied by people who are renters—long-term, generally key workers and, Ms Callaghan is absolutely right, for whom ultimate home ownership is such a faraway dream that it is not on our list at the moment.

The Hon. ADAM SEARLE: I accept that, but is this not a significant and emerging social problem, given the clear connection between people who are in poverty as they reach the end of their life and homeownership—i.e. if you own your own home, your chances of not being impoverished in older age are much improved. If we are having a growing segment of our population who have no real choice but to rent for their life, that is not just a lifestyle choice or something we can go on. This is European-style—in Europe, there are different financial and tenure arrangements. People have a lot of security around their leasing, which is just completely foreign in this State and in this country. Don't we really need to do something to tackle this unaffordability of homeownership for the next generation—I mean, rental?

Mr ENGELER: Ms Callaghan might have some more details on this, but I would say you are absolutely right. It is a "yes, and", and I think at the moment what we are dealing with is the urgent is keeping us from the important. You have absolutely identified an important issue and that is exactly right. We are in agreement about that.

Ms CALLAGHAN: Yes. We have noticed initiatives from the State Government like the land tax concessions for build-to-rent that came in last year. We regard that as a positive thing and we had some hopes when we heard the upper House debate over it that build-to-rent products would be pitched at people who would use the opportunity to save over time for home deposits. But we are concerned that that has now turned into a financial premium product—that the build-to-rent model is turning into a premium unit model that will be more for middle to upper class people to rent longer to save for deposits. There are certainly a lot of schemes. There is the rent-to-buy product. There are a lot of different schemes that could be explored that are used in various jurisdictions. We agree with you, yes. If there was a review on affordable housing, these are the kinds of things that we could look at because our view is that the private housing market, regardless of how much supply you want to churn out of it, simply will not deliver enough affordable housing, either to buy or to rent, for a very large part of the population.

The Hon. ROSE JACKSON: Following on from that comment, Ms Callaghan, one of the things that I think is potentially missed when we focus just on supply, whether it is to rent or to own, is that it also is not necessarily distributed in the right way across Sydney. I think that point was linked to the AHURI report that you mentioned. Where we just talk about supply and where new properties are coming online regardless of the ownership structure, that is particularly concentrated in some areas of Sydney and that means particularly key workers who are trying to get secure housing are living more so in those areas and having to travel incredibly long distances to their places of work. Particularly if they are shift workers like police officers and nurses, there can be a lot of stresses associated with that. How is the uneven geographical supply of new properties impacting on key workers?

Ms CALLAGHAN: That same research noted that in Sydney there are over 44,000 key workers who commute over 30 kays to work and a further 16,000 that commute over 50 kays. So, yes, there are a lot of people who are travelling long distances to get to work. We look at things like the planning for the new airport, the aerotropolis—opportunity to build a new brand new city, one that is the size of Adelaide surrounded by very big, already busy dense populations of various council areas. We are concerned that the opportunity is not being taken. The assumption is that the supply will, by definition, provide enough affordable housing for the workers who will certainly work there and the expectation is that they will live there.

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We were really pleased to see the Government's new model for planning infrastructure for the new city but dismayed to see that things like social and affordable housing were excluded from the consideration of what was the infrastructure that was required. So the model was "What is the infrastructure we could feasibly collect contributions for?" rather than "What is the infrastructure that we would need for this new city?" We do not accept that just having a metro station nearby will be enough to enable people to live [inaudible] a lot of key workers work by definition. They will need to be in place to work. They work unsociable hours, often stressful jobs. We are concerned that that new city, through lack of planning and decades' foresight, will not actually provide enough—it certainly has got very little planning for any social housing. Their only plan is to redevelop a few existing social housing SEPPs that just happen to be out there.

We know that the population will need social housing in the future. Why not plan for it now? Dare I say that the scheme for affordable housing is quite minimal and, again, the contribution plans that need to be set up to collect those contributions are not known and are not designed yet, and they really need to be known now and planned for. Again, we are concerned about the assumption that if you build enough houses, enough of them will be affordable when the private market just has not behaved that way. I know you have got another speaker today, Dr Cameron Murray. We often look to him for advice and research about how does the housing market actually behave rather than peoples' idea and assumptions about how it should. It behaves in a particular way and it does not provide enough affordable housing for a very large proportion of the population.

The CHAIR: That is actually the end of our time for this session. Unless there are any other burning questions, I will say thank you very much for appearing before today's important inquiry and for the important work you both do in this space. I do not believe you took any questions on notice. Thank you very much.

(The witnesses withdrew.)

(Luncheon adjournment)

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CAMERON MURRAY, Postdoctoral Research Associate, The University of Sydney, affirmed and examined

The CHAIR: Dr Murray, do you have a short opening statement to make?

Dr MURRAY: Thanks for the opportunity to be part of the inquiry. I feel like it is appropriate for me to contribute today as I think I can take some credit for putting the idea of taxing rezoning windfalls into the public debate over the past five years, although the idea itself has a long history under the name of betterment taxation. In fact, the ACT was itself created and funded based on the principles of betterment taxation or value capture. As redevelopment of uses grew in the ACT, in 1971 they enacted a rezoning windfall charge of 75 per cent of the value gain. What is interesting is that Sydney also at that time, in 1970, enacted a 30 per cent charge on the value gained from converting rural to urban uses. The lessons from that case are probably relevant here because it lasted just one political cycle before landowners successfully lobbied for its abolition. So successful has it been that very little has been written about it since.

I would argue that because there is a game afoot of generating billions in windfall gains from manipulating the planning system in your favour, it is certainly bad form to publicise a policy that might eliminate your payoffs from your insider connections and your ability to game the planning system. I see the principle of this rezoning tax and this bill as economically sound, efficient and fair. I conceptualise the idea of rezoning to higher density as much the same as if a government-owned property adjacent to private land was simply given to that private property owner for free to increase their legal development rights. Conceptually, you can imagine giving air rights for free to landowners is much the same as giving them rights to adjacent land. I think it is something we should think about—selling those rights to landowners rather than giving them for free.

My brief reading of the current bill is that it seems like, in practice, and when more information comes about, its implementation would be used to tie rezoning decisions to this value capture. That is an approach that has been successfully implemented in many cities where they have targeted industrial areas or agricultural areas for densification and re-use and charged in those areas for that additional value to fund the infrastructure in those areas. I think there are some good things, and I am happy to chat in detail about implementation or other concerns.

The Hon. ADAM SEARLE: Dr Murray, thank you for your opening statement and for coming along to give evidence today. As you have said, you have written quite extensively on the public good that can come from taxing or getting an appropriate share of windfall gains consequent upon rezoning and having that come back for the public benefit. It sounds to me that conceptually you support the thrust of the legislation.

Dr MURRAY: Correct.

The Hon. ADAM SEARLE: That is good. When you look at the bill itself that Parliament will have to consider, a lot will depend on the regulations. There are huge amounts that simply will not operate unless there are regulations in place, and we have not seen drafts of those. Equally, there is capacity and requirement for the Minister to make directions to make significant parts of the legislative framework operate. We do not know what will be in those. How are we as legislators to make a proper evaluation of whether the scheme as a whole will actually meaningfully drive down housing prices or make housing more affordable absent those sorts of details? Can we really make a sensible judgement on what we have got?

Dr MURRAY: My view on that would be that this type of mechanism, which is essentially the same as selling development rights from the public at a discount—so it is just putting a market price on a set of property rights that exist—is not going to result in any changes to affordability or changes to the rate of supply. In fact, you should see it more as a fair way to raise revenue, just as we would see that selling surplus government land rather than giving it away for free as a fair way to get revenue. It also reduces the payoff. Think about it as an insurance policy against successfully gaming the planning system or influencing the planning system. Where that happens, at least the public gets a share rather than the landowner making potentially hundreds of millions from their lobbying efforts. Even if they are successful, the community gets a share. I do not see any mechanism by which this would have an affordability effect at all.

The Hon. ADAM SEARLE: In terms of affordability, even if councils somehow approved 10 times as many DAs in a given year as they do today, there is no guarantee that those increased approvals would be acted upon in a given year or even in a more expeditious time frame, is there, from the perspective of developers?

Dr MURRAY: The way I see it, independently of how this legislation is implemented with the various regulations, guidelines or directions, the way to think about the planning system is that the market drives the demand for approvals. The planning system can only say yes or no. It can direct the location of different things and it can say yes or no to a market-led speed of development. The question would be why would private

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developers ask for more approvals? Maybe they want to reduce risk of future changes, but, regardless of how many approvals they have, the evidence shows it does not really affect the rate of supply because the market has a finite demand.

I studied the annual reports of Australia's top eight listed property developers, who build around 10 per cent of Australia's new dwellings. In their annual reports, where they are obliged to be honest to their shareholders, they explained that although they had land banks with approvals or in zoned areas of many thousands—for example, Lendlease has over 50,000 sites that it owns for detached housing—they only plan to develop 1,000 or 2,000 a year in response to market conditions. If their balance sheet had 100,000 undeveloped potential sites, they would still target 1,000 to 2,000 per year because that is what is optimal for them. That is what the market can absorb without having large downward price effects and reducing their overall profitability.

The Hon. ADAM SEARLE: On that point, I have two questions. Can you supply a copy of that piece you have written to the Committee? I think that would be useful for Committee members.

Dr MURRAY: I sure can.

The Hon. ADAM SEARLE: Secondly, if I remember that article correctly, you were basically saying that a lot of these developers have, in some cases, 10 years' worth of housing supply where the land was already zoned or, as you say, in zoned. They are doing 2,000 or 3,000 units per year. They could double or triple that in a given year if they wanted to but they do not because—

Dr MURRAY: In fact they do. They do when the market is strong; and when it is not, they stop selling.

The Hon. ADAM SEARLE: When you say the market is strong, you mean enough people in the market willing to not just buy but buy at the price they want to sell at. It is not just simply people who want houses; it is people who want houses who can afford to pay those prices.

Dr MURRAY: Correct. You can imagine, on your balance sheet it is 50,000 vacant lots. You do not want to sell so fast that you depress the price of the remaining 49,000, right? Even if you have two lots, the same logic applies. There is a sort of finite demand that you accommodate. But it is true for the market as a whole, not just for individual developers. Can you just remind me, what was your key point?

The Hon. ADAM SEARLE: The second point was, to use your point about developers optimising the price at which they sell, it is not the question of housing demand; it is people wanting to buy homes who can afford that price.

Dr MURRAY: Correct. So, the way to think about it is, it is like a build to order. If no-one shows up willing to make an order at that price then you do not sell. You wait until someone else is willing to show up. There is a name for that—the market absorption rate, which is how fast the market suppliers of new dwellings will trigger those sales and then subsequently build those houses. That is relatively unaffected by the planning because planning is not a speed limit. It is a geographical regulation. You can build tall buildings here, you have detached houses here and industrial here. Within each lane, the market decides how fast to go. The planner can say yes or no when they get an application. They can only approve 100 per cent of the applications made, at a maximum.

The Hon. ADAM SEARLE: And they get approved on the guarantee of construction.

Dr MURRAY: Correct. But the approvals also follow the market, right? You do not want to go and get things approved if you do not think you are going to be able to sell them reasonably quickly or if you have already got other stages that you are still trying to sell in the development.

The Hon. ADAM SEARLE: And, again, if those publicly listed development companies that have got 10 years or more worth of supply already zoned for housing decide that, "Instead of selling 2,000 or 3,000, we're going to sell 9,000 in a year", the possibility is that that would reduce the price of their product, so they just have an incentive to do the opposite?

Dr MURRAY: Correct. Yes, it would definitely—

The Hon. ADAM SEARLE: They do not have an incentive to increase their supplies.

Dr MURRAY: It is totally possible. It is something they could do, but of course their shareholders would not be very happy. And they do: If the market supports that amount of sales at a high price they will double or triple sales. But if it does not, they will not. There is no mechanism for them to flood the market to reduce prices. This happens not just in the sales market. There is a build-to-rent estate at the Gold Coast called Smith Collective, which is the former Commonwealth Games athletes' village. It is 1,200 dwellings constructed for the 2018 Commonwealth Games. They are still trying to rent them out as a build-to-rent project nearly four years

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later. The manager of that project told me, "Well, you don't want to flood the rental market. So we've kept, on average—it's like, two years—1,200 dwellings off the market, sitting vacant, fully constructed, because we don't want to suppress the rental market." It makes more sense, in the long run, to drip feed those out over four years rather than immediately.

The Hon. ADAM SEARLE: Just turning to the bill, we are considering based on the Productivity Commissioner's report—again, I flag that there are a number of moving parts that are missing. Just as a matter of good public policy, should not the Government or the Minister have made all of those things, the regulations and the draft directions, available at the same time? Or are you just not in a position to speculate?

Dr MURRAY: No, I am not going to tell you what is good political strategy. But there is a choice of when to start the discussion. Do you go all the way to the end and put something on paper and people complain that they were not consulted or do you put the minimum? So, look, I do not have a strong view. But how effective this bill is in actually raising revenue and capturing that value, essentially pricing the property right that is given through rezoning, will depend on its implementation because there are a lot of subtle tricks to, for example, how you value a site before and after. Because there is only market value, so one of the two market values has to be essentially contrived or estimated, assuming that the property cannot be redeveloped. So 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. So, yes, those details are everything. But I guess we will have to wait and see. I do not think I can comment too much further.

The Hon. ADAM SEARLE: The local government sector has put the view to us in various submissions that taken together these reforms will, over time, lead councils to have less money to invest in infrastructure. The Productivity Commissioner says that when you combine the measures in this bill with his recommendations on lifting the rate base in line with the population increase, councils, over time, will have more resources. Do you have any line of sight on which of these two propositions is more likely to be correct based on the bill we have got? Or is it just not knowable on the information we have got?

Dr MURRAY: My impression would be that, as it is written, if the guidelines or the regulations to implement it are what I would imagine, then my expectation would be councils would raise more money. That would be my expectation, but it is not guaranteed; it depends on the details. For example, there are existing developer contribution systems and they can actually function in parallel with the land value contribution that is proposed because they are already sort of captured in the land value. So when you have a development site you already know, well, I have to pay \$40,000 or \$50,000 per dwelling, so I am incorporating that into my estimate of the development site. So the market value already subtracts that contribution.

Then the value contribution that is being proposed is the little bit that is left that comes from the rezoning. If there is nothing left then it is not a big contribution, right? It is a very small fee. If it is a really large value gain then it is a big fee and that is fine. They can work in tandem, so my expectation would be that there is additional revenue. On the revenue cap, since you mentioned it, I am from Queensland where that sort of thing does not happen and it seems kind of crazy to me to do that. It is almost like it is not really worth having councils. Maybe you should get rid of them if the State Government wants to tell them how to raise money and what to spend it on and how to do planning. But that is speculation for another time.

The Hon. ADAM SEARLE: Based on the policy thrust of the bill and your previous writings, is the bill fit for purpose in terms of what it is trying to do? Are there things that should be included in the bill that are not there or, equally, are there things in the bill that should not be there based on where the Government says it wants to head with this policy?

Dr MURRAY: I was pleasantly surprised at how—I mean, the bill is very broad. It creates this new, conceptual thing of land value contribution and it seems, the way it is written, to have a lot of scope for how it gets implemented. So from my perspective that is quite okay. It is not clear, for example, if other contributions can operate at the same time, applying to the same properties in the same location. Perhaps that could be clarified in the bill itself, that councils can choose to layer contributions and they do not have to just pick one. That would be my only concern at this stage. It seems very focused on also tying the use of a land value contribution to a rezoning decision, which I think makes it a lot more politically acceptable.

In the Australian Capital Territory you just pay the difference between the current use—even if the current use has been going for 40 years—and the new use. Whether the rezoning happened 40 years ago or last year, whatever the gap in the value is, you pay 75 per cent of the full amount. Whereas in this case it would be applied—the sensible way I am reading into how it would be applied, given how it is written, would be certain targeted areas for conversion from industrial to residential, or agricultural to residential, or some other type of targeted intensification. That is the way it has been used successfully in Latin America, for example, in Brazil and

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Ecuador, where they have redeveloped industrial areas in inner city port locations and funded all that capital investment and infrastructure with a betterment tax of this type.

The Hon. MARK LATHAM: Dr Murray, I was just wondering if you had a chance to look at the Centre for International Economics' modelling report on these proposals?

Dr MURRAY: No. Is it in the submissions?

The Hon. MARK LATHAM: It is publicly available. It was work conducted for the NSW Productivity Commissioner. I might as well run you through.

Dr MURRAY: Yes.

The Hon. MARK LATHAM: There is a high-scale benefit that is being claimed to GDP of \$12 billion in New South Wales, with a couple of thousand jobs to go with that. The first benefit that they identify is "Better incentives for growth from councils." I think this goes mainly to the rate peg changes. They are articulating a high-end improvement of \$822 million of State domestic product for the fact that councils will be more agreeable to population and urban growth because growth councils will not be so hemmed in by the rate peg restrictions. Is the rate peg, in your understanding, a major reason why councils are not pro-growth? I would have thought that in most areas there is a concern about other infrastructure provision for overcrowding and lifestyle amenity that is a big factor in any council that might be cautious about too much growth.

Dr MURRAY: Yes, I cannot see the rate peg itself being a huge issue. I also do not see the net effect across councils being particularly anti-growth considering that, across Sydney for example, there has been record apartment construction almost for the last decade. Yes, I agree that the rate peg is not a binding constraint, if you want to put it that way.

The Hon. MARK LATHAM: The second one that they articulate is the \$670 million high-end benefit to State domestic product from better incentives for the community to support development because of improved State infrastructure provision. It has to be an act of fantasy, doesn't it, to think that there will be a development turnaround because there is a regional infrastructure contribution?

Dr MURRAY: Yes, my view would be—I am vice-president of my local community group and I can tell you that I am probably the only one in that group who actually understands what the infrastructure contributions regime and the rating regime is. The movement is not malleable to numerical tweaks up and down the dial of the contributions regime. It is very much lifestyle driven. It should not be hard to have a planning system that allows some areas to preserve their lifestyle and allows incremental growth or redevelopment of certain precincts at the same time. That is a bigger picture view as well.

The Hon. MARK LATHAM: The modelling report concludes, "Of course, these types of impacts are highly uncertain in terms of how long it could take and the magnitude of the impact." So it is a stab in the dark. And then they say, "Overall, on balance it makes a small contribution to alleviating the problems related to development in New South Wales." This is not a bill that is actually claiming in any realistic way to boost GDP and to solve problems related to the development system in New South Wales. Isn't it a bill that essentially is trying to establish, through the regional infrastructure contributions, a new State Government revenue base?

Dr MURRAY: Yes. It certainly to me seems like at present there is a lot of value being dished out through the planning system when zoning reform happens. Without having any noticeable effect on the rate of new supply or the various incentives to council, it is essentially sharing the value that gets distributed to selected landowners through rezoning decisions with the public more broadly via councils. That is the way I see it. There are a few positives in that. You have to raise money somehow. I am not averse to raising money in this way and reducing taxes elsewhere in the system. But this is a particularly—just as it would be seen as weird for councils or governments to dispose of surplus property by giving it to the neighbours who happen to own property adjacent to that public land, although we do not need the revenue it makes sense to sell that property at the market price. This is essentially selling it at a discount by taxing a percentage of that market price. Yes, it raises revenue and I do not think it has major or even minor effects on the housing supply system as a whole.

The Hon. MARK LATHAM: I agree with that. I am very much in favour of value capture for sure. But isn't the difficulty here in establishing this new revenue base that there is no guarantee of a substitution effect? The Government may reduce other forms of expenditure on regional infrastructure and rely entirely now on this new tax, this new contribution.

Dr MURRAY: There is no guarantee, I agree. These are political decisions. There are many ways to raise revenue and this is a good one. After that point there is a lot of decision-making that goes on, on how to spend it or how to reduce taxes elsewhere.

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The Hon. BEN FRANKLIN: Dr Murray, thank you very much for being here. I first wanted to push back a little on the nomenclature that you have used in terms of taxes throughout your presentation. To me, tax is a very different thing to what we are talking about here, which is developer contributions. Taxes to me implies a much broader scale imposition on a broader population, rather than the user-pays system that we have here. Can you comment on that?

Dr MURRAY: If you are basing a transfer of money from a private entity to a government entity based on a proportion of a value to the tax base, I am fine with using any term you like. I do not see there being a functional difference, nor do I see there being a functional nexus—I think that is the word they like to use in New South Wales—between revenue and any spending. Money is fungible. You raise money; you spend money. Even if you put it in a particular account, it does not mean that you reduce input to that account from elsewhere in the budget.

The Hon. BEN FRANKLIN: It was a bit of a digression. I would like to pull back a little bit to talk about the debate about who actually pays the cost of infrastructure contributions and whether that impost should fall on the landowner, developer or homebuyer. Could you perhaps unpack a little how the costs fall on the different players in the system and how you think a well-functioning system can best distribute those costs?

Dr MURRAY: There is a saying among old-school property and land economists: All taxes come out of rent. Essentially it means that, at the end of the day, all taxes on property fall on the landowner. For example, rates come from the landowner. You are buying an asset when you buy a piece of property and the rate is a concurrent liability that you purchase alongside. If you reduce that liability, you pay more for the asset. It is true with developer contributions et cetera. We know for stamp duty, for example, that when you reduce stamp duty you get increases in prices because the purchaser has budgeted the complete budget and now they do not have to pay the government so they can pay more to get that asset. In general, landowners pay under these systems, whether it be rates, the land value contribution or the developer contribution. There are certainly different landowners that pay and at different points in time between a development contribution and the rates revenue, but ultimately that is the group that essentially funds councils through these types of revenue mechanisms.

The Hon. ROSE JACKSON: Dr Murray, one of the challenges that has been alluded to before—I think there is broad support for the principle of capturing some value from landowners when they receive meaningful gains, but the practice of how that is done and the implementation really does affect whether that is successful or not. As you have alluded to and we have alluded to, without a lot of detail it is difficult for us to know whether the model that the New South Wales Government will pursue in achieving that important goal is really going to work. So I suppose it would be useful to know from you, if we were to think about recommendations we might make in approaching the concept, what are some of the important principal elements to include and perhaps some of the important pitfalls that can make a scheme just wildly unsuccessful?

Dr MURRAY: Good question. I think it would be unsuccessful if it was implemented and councils were forced to choose between land value contributions and developer contributions that are set. I do not even know how they are set in New South Wales at the moment, but they are fixed and capped in Queensland.

The CHAIR: Can the Hon. Rose Jackson mute her microphone?

The Hon. ROSE JACKSON: Sorry.

Dr MURRAY: I think a pitfall in the implementation would be to force councils to choose between a developer contribution and a land value contribution. They work fine in tandem. I mean, the bigger the fixed developer contribution, for example per apartment or per square metre of commercial area, the smaller the land value contributions. It will automatically shrink if you do both. That is one pitfall. The second one is the valuation base, the before and after. So you really have to take the before value to be the value as if the previous use was the only use, the land in perpetuity, and the current value, the high value, is the value assuming the new use is in use and the charge has already been paid. So there is a bit of a trick there because the market value is actually going to be somewhere in the middle of that until the charge is paid. I have an explainer paper about windfall rezoning. Essentially, for example, if you had a 50 per cent charge on the uplift but your high value was the market price and not the price after the charge has been paid, you actually only get a third, instead of 50 per cent. You get 50 per cent of two-thirds. So there is that.

There is the multiple implementation and I suspect one pitfall might be—I am going to assume that in the guidelines of the regulations there will be some kind of trigger where councils are allowed to implement this charge: You have to do X to be able to use this type of value capture contribution, rezone from this to this. Whatever that mechanism is that lets them use it might be a really high bar for some councils compared to others and that might eliminate them using it altogether. So they are sort of the main ones that come to mind right now. Again, more information would be better. My recommendation would be to call the Australian Capital Territory

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where they have had this challenge and they have had probably had half a dozen reviews in the last 50 years to improve on it, increment it and settle the valuation issues that come with it. That would be my step.

The Hon. ROSE JACKSON: I have one other question for now, if other members are not jumping up and I can keep going. The value of land can change because of rezoning but it can also change because of other government decisions, such as where infrastructure is located, particularly public transport infrastructure but obviously other infrastructure as well. Does the potential focus of the bill quite specifically around rezoning issues create potentially some unfairness where other landowners are getting increased value for their land because of other government decisions—as I said, specifically, for example, in relation to infrastructure? Would it not be useful to think about different models or different ways that we might capture the value uplift more broadly? Is that something worth considering?

Dr MURRAY: Yes. There are two points there. Firstly, rezoning is a lot easier to identify the value that came from that external government decision and it was a gift, right? Because we do not want landowners to not get the benefits of their own return on investment on this site, right? So, yeah, they might get a new train line down the road but then they might also renovate their building to accommodate that, right? So I think there are more complementarities of investment on the transport side. The rezoning side is a lot easier, simpler to administer, less debatable. But in general, rates on land values and land taxes on land values automatically get a little bit of that back over the long run anyway. So the rate cap is a little bit of an issue, meaning council's share does not grow as quickly as, for example, the State's share might through land taxes.

Although I have done a lot of research on how much new transport infrastructure increases local property values, the actual implementation is very, very tricky and I think you might end up in a case where you are spending more money arguing about how to implement it than you are raising, whereas the rezoning can be a lot clearer. If councils have this industrial area and now we are redeveloping it to other uses, if you own a site and want to redevelop it here is the charge. We have clear before and after values. If you are the last person in that area to develop, your value gain when it is measured, when you develop, will be higher anyway because of all that local investment, right? You have waited for everyone else to go first and everything to be upgraded. Well, you are going to pay a bigger charge, right, because the land value gain for you is higher when you convert the use. So you get a little bit back on that as well. But certainly there are distributional issues on transport and transit investments in cities and which landowners win and which do not. They can be worth a lot of money—I have done calculations on it before: hundreds of millions for some favoured landowners in some cases.

The CHAIR: Thank you. The Hon. Ben Franklin has come back. He had an issue with his phone overheating. Fire away with a couple of questions.

The Hon. BEN FRANKLIN: Apologies, my phone overheated and I decided to shut down. Where I was going with the questions I was asking—and I look forward to reading your response—was whether you have a view on this: Do you think that the system being proposed under this bill moves to a fairer balance of how costs are shared from the premise that I stated before?

Dr MURRAY: 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.

The Hon. BEN FRANKLIN: Thank you. The other question I had was about the provision of good infrastructure. How much of an interest to you think developers have in the provision of good infrastructure when they are completing their projects in relation to the community or council? Do you think it is in the developer's interest to actually do this and actually provide good infrastructure development, or do you think that it is in their interest to be shoddy, cut and run, and leave it to somebody else?

Dr MURRAY: It is a bit hard to generalise for two reasons. Typically your large estate developers, like your Lendleases and Stocklands, have an interest in local infrastructure much more acutely than your ad hoc developer who buys sites all across the city and does them in sequence. But as we have seen from a couple of examples in Sydney, it does not mean that they actually make the investment to improve even the infrastructure they have built themselves or the quality of the buildings. But, of course, there is an interest that they have in that the better the local amenity, the more they are going to get paid for the development, right? So they have an interest.

Of course, the problem is the distribution of who pays. If they can get that investment from the council or from the State and get someone else to pay, it makes perfect sense to minimise what you contribute. I am not

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saying that they are evil. I am saying that the obvious, correct, market-driven thing to do is to minimise your own personal contribution. It is not that there is no benefit to a developer from having more infrastructure. The trick is if they can get most of it without having to pay it, they get almost all the benefit and none of the cost. So it is a distributional question.

The Hon. ADAM SEARLE: To pick up on a point that the Hon. Ben Franklin had raised, Dr Murray, I think you are saying the bill provides for a better sharing of the infrastructure contributions as between developers and developers and landowners, but there is no indication in—does that mean that developers will pay less going forward than they do today? Is that what you take out from the legislation?

Dr MURRAY: No, but would you mean pay lower prices for development sites or pay less—

The Hon. ADAM SEARLE: Pay less in developer contributions.

Dr MURRAY: It depends how it is implemented. If a council chooses to keep their current developer contributions and then use this land value contribution in selected areas, then as a whole they will pay more and probably a lot more in some cases if those areas really are a big increment in development intensity, and that is where all the focus is. I would hope that is how it goes.

The Hon. ADAM SEARLE: One possibility is that developers pay less and landowners pay the shortfall. Another option is landowners make a contribution that they were not previously making, and therefore there is more money for infrastructure overall. What this legislation does on that spectrum of possibilities is totally unclear because we lack a number of the details about how it will be implemented. That is the case, isn't it?

Dr MURRAY: I think it will be the case even when it is implemented of not being able to unpick who paid more or less in most cases. When I say "developer", I just mean whoever happens to own land when it is rezoned. If it is not a developer, fine, they do not do anything. They 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. And when they do, they will get a smaller price for it because they will have to pay this contribution. That is all that is going to happen. I think what you mean is landowners of sites that are not getting developed compared to developers.

The Hon. ADAM SEARLE: To be clear, one of the issues that we have heard from developers is they are in the business of acquiring sites, proposing developments—whether it is houses or units—but they obviously at some point have to buy the land. Then they say the landowners jacking up their prices is a big input for them as a developer because eventually they have to buy that land in order to be able to build the units, or whatever it is, to sell. That would be your Mirvac's, your Stocklands and others on that sort of spectrum. Their argument is, "Well, rather than us having to pay that to the landowner to acquire the land"—I guess the theory behind this bill seems to be that on the point of sale, presumably to a Mirvac or a Lendlease or whatever, the landowner then makes a contribution to the council or to government.

Dr MURRAY: Correct. That is my understanding of how it is written. When you make that sale at the higher use, you split the revenue. Some from the rezoning goes to the public and then the rest of the market price goes to you. That is right.

The Hon. SHAYNE MALLARD: I was interested in Dr Murray's comments about his earlier report around the land banking. I was quite astounded to hear that there are 60 Lendlease sites across metropolitan Sydney that are land banked. It goes back to the old De Beers and Meriton indeed does that. They develop and lease and do not sell components to keep the price up. Is there a moral question there in the context of our dilemma around affordable housing in our city, and a role for government to be involved here, of companies land banking and holding back product to artificially keep the prices up? I am sounding like an old socialist, I know.

Dr MURRAY: No. This is a really important, and I think it is the crux of many issues that will come up in this legislation and future housing issues. It is not that these guys are evil or bad—

The Hon. SHAYNE MALLARD: Shareholders.

Dr MURRAY: —it is that every landowner has the incentive to hold it because it is an asset. Just like I can own BHP shares and I do not panic and just settle and cause a market crash, they just happen to own property shares, shares of a three-dimensional space you could call it, and they would be crazy to just panic and sell all their assets. They want to drip-feed them at a particular rate because when they develop, all they are doing is swapping a land asset on their balance sheet for a cash asset. They are both assets. It is like why do I want one over the other? Because undeveloped land is a good investment. I should hold it and keep it undeveloped. It is not like they are evil and it is not like they are a monopoly; it is that the property system—the word "property" means monopoly. If you go to legal studies from the nineteenth century, it was synonymous—the property system is a

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monopoly. Everyone has got an individual and joined incentive to get the maximum price rather than flood the market.

Do not think that we should be thinking that there is some kind of alternative market outcome. This is just how property markets function and they are doing fine. If you want cheap housing, the Government can certainly go and build housing and be a developer. The New South Wales Government has Landcom and the Land and Housing Corporation. They are the biggest developers in the country—\$52 billion balance sheet, Land and Housing—and they are the only ones who think they cannot make money building houses in Sydney. If you want to give people cheap housing, you have got to offer non-market alternatives. If you do not like the market outcome—just like the healthcare system, we have got a market of private health care, that is great, and then in parallel we have this public system for those who cannot pay the market price, and that is great too. They both work and together they solve many of the monopoly issues that come in health care.

We could certainly do that. There is no big issue. We did it for two decades after the Second World War. Fifteen per cent of the new housing was public housing and then we sold it all to people at cheap prices. We can do whatever we want, but I do not think we should be caught up saying these people are evil or they are doing something especially bad or they are colluding or they are a cartel or there is something special and unique we should tackle. No, that is just how property systems work. Look at any country in the world right now and they are all complaining about the same things. The same thing happened in the 1870s and the 1890s. Property booms, they come in cycles. They are monopoly assets. If you do not like it, come up with some alternative. I like to use the word "experiment" with alternatives—not-for-profit providers, public housing. Just give it a try. If it does not work, sell it off. That is my view on the matter.

The Hon. SHAYNE MALLARD: We could talk all afternoon on that.

The CHAIR: Thank you, Dr Murray. That was all extremely useful. Unfortunately, we are out of time. Thank you very much for appearing. You did take questions on notice.

Dr MURRAY: There are some documents for me to send. Who should I send them to?

The CHAIR: The secretariat will be in touch with you regarding that.

(The witness withdrew.)

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TOM FORREST, Chief Executive Officer, Urban Taskforce Australia, affirmed and examined

AARON GADIEL, Urban Taskforce representative on the Land & Environment Court Users Group and Partner at Mills Oakley, sworn and examined

The CHAIR: Mr Gadiel is looking like he cannot hear anybody. While the secretariat is sorting that out, Mr Forrest, will you be making an opening statement?

Mr FORREST: Yes, I will happily absorb the time, Chair. Thank you for the invitation. I thank the Committee for the opportunity to discuss with you the Urban Taskforce submission to the proposed amendment to the Environmental Planning and Assessment Act through the infrastructure contributions bill. I hope soon to be joined by Aaron Gadiel, partner at Mills Oakley, a highly regarded planning law specialist. At the outset, I acknowledge our support for the work undertaken by the NSW Productivity Commission and its thorough examination of the efficacy of the New South Wales system of fees and charges for the delivery of State and local infrastructure. Urban Taskforce has consistently noted—and this is important context which I think you have already been drawing upon in recent discussions just now—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 that therefore has on the end price of housing once it goes to market.

The bill before us at the moment needs to be considered in the context of the COVID-19 pandemic and the current reality of the housing supply and affordability crisis in Greater Sydney, and indeed across regional areas of New South Wales. The outcomes from the Productivity Commission review are not perfect for industry. We do not agree with all of it. There are parts of it which have raised some considerable concerns. To the extent that the infrastructure fees actually result in increased delivery of infrastructure and therefore result also in the delivery of greater numbers of planning approvals and therefore housing supply, the bill when seen as a package of changes has the qualified support of the Urban Taskforce. The outcomes, as I say, are not perfect. While we do not like aspects of the change, as a package, industry's general qualified support—and I think this is reflected in some of the other submissions that you have received—is indeed in place.

But I do agree with the view that was expressed earlier this morning by members of the Committee that it has been rushed through. There is a lot of detail that is critical to whether or not actually in detail it should be supported. There is the IPART review into the ratings cap that is yet to be finalised. There is the technical working group that is being set up with a whole bunch of practical working examples that will inform the directions that the Minister might give and the regulations that will follow on. All of those should be on the table before key decisions are made on something that could be so fundamental as this. The qualification arises from missing detail yet to be developed in the form of regulations and ministerial directions and practice notes. We are being asked to comment on the bill before the House without full knowledge of that. That is always difficult. It is even harder for you to decide whether or not it should be passed.

We note the recommendation to postpone the infrastructure fees and charges from construction certificate [CC] stage, construction, to occupation certificate [OC] stage, the end of construction—so from the start of construction to the end. That has been a practical issue for a lot of development around Sydney, particularly in the uncertain world of COVID-19 where people are wondering if we should be spending the money on employing a bunch of people to keep the economy going or not. We have got to fork out this big lump of cash right up-front. That is a practical constraint and the Productivity Commissioner recognised that as a practical constraint, not just during COVID but generally, and took the view that that could be managed by making those contributions available at the end of construction not at the start and therefore effectively being a tax on the start of employment of people. That is not something I would have thought that we would want to see. It is critical to making the feasibility funding work and it is also critical for secondary lenders.

We have got a situation, particularly in the apartment market at the moment with problems in Mascot and at Opal and the perception, which have been partly addressed by the Legislative Council and the work being done by the Building Commissioner in improving the practices of all builders—which we entirely support—but that has caused the practical reality that it is hard to get off-the-plan sales for apartments. That makes the up-front funding and cash flow difficult. If you have also got a tax in place where you have got to hand over the levies for infrastructure before you even start to get funds coming through the door, it starts to make the feasibility of any moving forward a hell of a lot more difficult. We support the proposal that there be a deferral from CC stage to OC stage for the payment of those levies.

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. Given that interest rates

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are so low and TCorp are able to access those very low interest rates, we would have thought that that was a sensible way to progress it and to help out local councils that do have difficulties in that regard. We have got real concerns about the regional infrastructure charge as it is currently proposed. There is no real nexus between the regional infrastructure charge raising the taxes and any actual contribution to any particular development. You can be raising funds in one area of Sydney and spending it completely in another. That is different to the way that we have always raised infrastructure fees and charges. There has always been a nexus between the raising of a fee and the payment of a levy and the delivery of something that would facilitate the housing going forward from that. So we have got a bit of a concern there.

That said, we also do support broadening the base and stopping essentially an action where you are almost picking winners and losers. We will have a massive development here, but we will not have it just across the road. That seems to be a bit anomalous. Having a regional more broadly based fee is something we do support. Again, it comes down to the detail, which we do not have before us and we are unable to do the analysis. There is no apparent limit. Now I turn to land value contributions, which is the other really critical part of the bill. We have been assured that they will be limited to the land components of section 7.11 contributions and there will be no double dipping permitted. However, the bill leaves open the possibility that a land value contribution may have to be paid for land as well as a fixed development levy. That means that any given site can effectively end up paying twice.

We suggest that IPART be tasked with reviewing proposed land value contribution schemes, particularly in the first instance or maybe for the first two years. If it becomes unnecessary to do that, c'est la vie. That is okay. But to remove that point of scrutiny seems to us to be not appropriate. There is a very important part of the bill, and my colleague Mr Gadiel will speak to this. The existing appeal mechanism to the Land and Environment Court has been removed. That must be retained. You will have situations where people consider themselves to have been unfairly and unjustly dealt with through this process. To have no appeal mechanism and no IPART review of a land value contribution scheme just seems to be almost hanging it over and hoping that everyone will act in good faith and there will be no problem. The practical reality is there are always difficulties and controversies. There are always anomalies that need to be properly considered and properly addressed.

In good faith, we have suggested a range of amendments that would improve the operation of the Act, and Aaron Gadiel will speak to some of the details of that. We have done that on the basis that even if you accepted all of the policy positions that the Government has taken, all the recommendations of the Productivity Commissioner and the intent of the bill, we think that there are some drafting amendments that should be put into place to improve the efficacy and the outcome arising from this bill. They are included in our submission at attachment 2, and I draw the Committee's attention to that. I do not know that it is worth going through too much of that in detail unless you particularly want to, but I would be happy to address any of that and industry's concern to drive additional supply of new homes. What we do not see here is a nexus between the raising of money for infrastructure and the delivery of additional housing supply. Why is that? Because no-one is putting the pressure on the Department of Planning to approve more housing approvals.

I note the views of Cameron Murray, as previously articulated. I fundamentally disagree with him, as does the NSW Productivity Commission, the Federal Productivity Commission and the Reserve Bank of Australia. All have pointed to the need for approvals to drive supply because when you have multiple approvals in one location, there will be an incentive not to hold that land for fear that your competitor across the road will steal the market from under you. That is particularly the case right now, where we have massive price rises and we have massive demand. The real problem is the amount of approvals available so that we can create that competition and so that we can get the housing industry going.

The CHAIR: Mr Gadiel has tuned in. I understand you are listening to us on the phone but we are watching your video. Is that correct?

Mr GADIEL: That is correct.

The CHAIR: Mr Forrest has made an opening statement, which I understand was probably on behalf of both of you. Is that correct and can we get to questions?

Mr GADIEL: I had some legal points to outline. I am happy to deal with those in questions if it is likely to be raised, but otherwise it would be good to briefly outline them.

The CHAIR: Thank you. That would be useful.

Mr GADIEL: There are two broad issues here. One is the apparent intent of the Government and its agencies and the other is what the legislation actually says when it is written, and there appears to be a divergence. I think the Urban Taskforce is willing to accept that this has come about as a result of clumsy drafting but, if that is true, it is absolutely critical that this clumsy drafting be rectified before the legislation is seriously considered

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and passed by Parliament. Because the legislation, as written, wildly diverted from the stated objectives of the Government. Mr Forrest would have already addressed in some detail the Urban Taskforce's position on that, so I will not go into that, but I will deal then with the bill as written. I do not intend this to be a criticism of the Government or its agencies because I am hopeful that the Government would take the view that what I am about to outline is not the intention. If it is not the intention, then it is very important that the legislation be changed because the problems I am about to outline cannot be fixed by words in second reading speeches, assurances or future promises of ministerial directions or regulations. They can only be fixed by amendments to the legislation.

The most critical thing is there is a principle in revenue law, both revenue law as it exists in the planning system under the Environmental Planning and Assessment Act and revenue law as it exists when it is administered by Revenue NSW under the Taxation Administration Act, the Land Tax Act and the Valuation of Land Act. All of these principles are that, when individual determinations are made about taxpayer liability, there is a right of merit appeal to an appropriate authority to have those bureaucratic rulings reviewed at a judicial or quasi-judicial level. For instance, for land tax assessment notices, every citizen has a right to appeal the determination of their land tax liability to either the NSW Civil and Administrative Tribunal [NCAT] at their choice or, if they wish, the Supreme Court of New South Wales for a merit review.

In the planning system, with the existing system of development contributions, individual developers who are liable for those contributions have a right to appeal to the Land and Environment Court if they believe the determination of their development liability is unreasonable in the circumstances of the case. This legislative scheme provides for no such review rights in relation to the new land value contribution, which really is a form of vendor tax applicable to development sites. This land value contribution has to be paid by a landowner if they are to sell their site before it is developed. It is a new form of taxation and it reflects or brings forward—it is carving out the developer levies that are normally paid on developments and says, "If land is being rezoned, then this levy will be payable by the landowner before the land is sold." The Urban Taskforce is not in principle opposing that provided that many other things occur which the Government has committed to—and there is a lot of detailed uncertainty on that and I think Mr Forrest would have dealt with that—but if such a principle is to be accepted by the Parliament it is critical that the conventional review rights be retained.

The review rights that exist at the moment under the planning legislation is a review to the Land and Environment Court, a specialist court with expertise in this area and many decades of experience in dealing with disputes about the application of development contributions with unquestioned independence. In our submission particular amendments are set out in schedule 2. Essentially our submission is that that existing right to appeal on a merit basis for the reasonableness of a particular charge in particular circumstances be retained and reinstated in relation to this land value contribution. It is also important that when individual contributions are determined there is a proper legislative basis for that determination. At the moment the legislation just says, "If the land has been rezoned." It does not say when the rezoning has happened. I mean, every bit of land has been rezoned at some point. Some land was rezoned five years ago or 10 years ago. Just about every local environmental plan in New South Wales postdates 2006, so all land has been rezoned at some point. When would the land have had to have been rezoned for it to attract this new charge?

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. There needs to be some proximity in terms of the rezoning that triggered it; like a rezoning that has been made under this new legislative scheme in anticipation of a land value contribution being imposed. There also needs to be clarity around the land valuation because at the moment the land value contribution is imposed whenever there is an increase in land value. The way the courts will interpret the current wording is that increase in land value would be before the reduction in land value, which arises from the imposition of the land value contribution. That is not ideal because the land value contribution could be very large for some people. There could be very significant reductions in value.

If a rezoning gives you a 10 per cent increase in the land value but the land value contribution or vendor tax takes away 20 per cent of your land value, that is a net reduction in land value. There should be a legal principle that if this land value contribution is to apply to land, there still must be a net increase in the value of the land. That reflects the idea of some sharing of the value of a rezoning rather than it being an arbitrary imposition. They are the most important legal points that we have to outline. I am happy to take questions on those.

The CHAIR: We will now move to questions.

The Hon. ADAM SEARLE: Mr Forrest and Mr Gadiel, thank you for those opening statements. They were very useful. Just turning to what Mr Forrest was saying in terms of the qualified support, this bill seems to embody an idea about value capture and landowners making a contribution to the funding of infrastructure, but key parts that would help us understand how this is going to be implemented—the regulations and the ministerial

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directions—are absent. Again, I am not being critical of the Government, but it is hard as a policymaker or legislator to evaluate what the new scheme will actually look like without those important details. Should those details not be on the table at the same time as the legislation so you, the community and we can better understand what will happen when this is implemented or if this is implemented?

Mr FORREST: We completely agree with what you have just said, Mr Searle. Thank you very much for characterising it so simply and accurately. There is a lot on the table here. There are a lot of issues that really are subjective. I think you heard it from Peter Achterstraat's evidence today. He is the very author of all of these changes and proposals. He said on several occasions, "Sorry, the detail is not yet available. I am unaware as to the detail of how that might be implemented." Really, that will be determined by the detail of the outcomes of the technical working groups, which we will be a participant in, as will other property and industry groups, as will Local Government NSW and others.

They will go through a range of case studies but it seems to me very concerning that that technical work is going to be done after you have considered the bill. It just seems bizarre. We need to get that technical work and those things sorted out so that all of those outcomes with a range of different case studies—greenfields, brownfields and different types of density changes—all of the things that my colleague Mr Gadiel just referred to, all of those can be tested and we can see what the outcomes are. That will inform the detail of those ministerial directions, the guidelines and potentially regulations that will go before Parliament at some stage in the future. Of course, they get made and you have the opportunity to disallow regulations but for a lot of the rest you do not get that opportunity. I think all of that needs to be on the table.

I think let us just pause is an entirely sensible thing to do. Let us wait for that IPART review to be complete. All up, I want to emphasise that the Productivity Commissioner has done a very good job of coming up with a range of ways to simplify and improve the gathering of infrastructure to make it less winner and loser from across the road and have a broader system which is more consistently applied—100 per cent support that. We participated and cooperated with the work that he did, but the detail just is not there as to how it is going to be implemented. To move forward now, it is too soon.

The Hon. ADAM SEARLE: Thank you for that quite plain response. I think that is very useful. Do I understand you correctly: Was there a suggestion—and I do not want to put words in your mouth—that, given the importance of the regulations but also the ministerial directions, should the ministerial directions theoretically be also subject to parliamentary scrutiny and potential disallowance? Would that be some way of creating some sort of accountability in case the implementation of an idea is at variance to how people thought it might be going to be implemented?

Mr FORREST: I would not have said subject to disallowance. What I would say is make it publicly available before the passage of the bill so that you could consider the entire bill and all of its consequences with all of its regulatory instruments as one. At a personal level, I am not a big fan of putting everything back to Parliament for disallowance because inevitably at some stage sometimes there is a need to move forward with things and Ministers have the power to do that. Through the electoral system that can be decided whether or not that was a good or a bad move, and I accept that there is some role there. But I think on this occasion it is not reasonable for you to be making decisions on this bill until you have got a lot more detail in front of you.

The Hon. ADAM SEARLE: Thank you for that. That is quite useful. In terms of the detail, your submission says, "Look, you have got some qualified support for the bill, subject to a few points", and one of the points is the Government's commitment to delivering infrastructure in a timely manner. Can you speak to that part of your submission? What are your concerns there about the track record of the Government so far and your concerns going forward?

Mr FORREST: This is something which is dealt with in detail by the Productivity Commission where they reflect upon the habit, if you like, of councils of sometimes holding what can be quite large sums of local infrastructure contributions and not actually delivering infrastructure. Inevitably, the members of our industry get blamed for that. We get blamed when we have already paid quite substantial contributions for local infrastructure or State infrastructure. Then the building gets built, the density increases, the number of people all move in and the local infrastructure is not delivered.

Now that is not always the whole story. I accept that sometimes there is underfunding and sometimes there are issues between State and local government as to who is going to do what. But the fact of the matter is that it is an issue and we would like to see stronger requirements that local infrastructure contributions are spent on the local infrastructure and delivered in the same time frame as the development is delivered. That way the sorts of issues that Mark Latham was raising this morning—where you get this disparate view of development being delivered without the supporting infrastructure—can be helped and improved.

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Mr GADIEL: If I could add something to that. Until about the early nineties there was a legal obligation for council that collected the contributions from developers to actually spend the money on the things that they collected them for. Some court decisions upheld that and said, "Well, look, if they don't spend the money, then ultimately it might have to be refunded." So government in the nineties changed the legislation to break that link. At the moment, the funds now can sit in a local council's bank account indefinitely and eventually they can then change the contributions plan so the infrastructure that they promised the community and collected the levies for in the first place might never be delivered and replaced with some other infrastructure plan.

Really, we need to go back to a situation that existed in the early nineties and before where, if money is to be collected in this way and not called a tax—this is a charge, we are told, not a tax—then it must be held by the council for the purpose for which it was collected and they cannot break faith with the community by then not actually building the infrastructure. Ultimately, there should be recourse for the people who paid it that if the council is not able to spend it in a reasonable time, they should ultimately return it to the people who paid it rather than bank it into, effectively, some quasi form of control over revenue.

The CHAIR: We will move on. We might come back to you time permits, if that is okay.

The Hon. ADAM SEARLE: Yes.

The CHAIR: We will move to some questions from the Hon. Mark Latham.

The Hon. MARK LATHAM: Can I ask Mr Forrest to elaborate on the point about housing affordability and not having enough planning approvals of housing stock in Sydney, in particular? What is the blockage? What is the problem here that you have identified?

Mr FORREST: Yes. This is partly, I guess, some refuting evidence to that which you just heard from Cameron Murray and that would be that there was a drop-off in housing approvals in 2018. You had high numbers of housing approvals—around 50,000 per annum—in Greater Sydney for three years, 2015-16, 2016-17, 2017-18. At the same time, then or about 2½ to three years later you saw really good housing numbers coming through. Since 2018 there was a drop-off in housing approvals and part of that was political and part of that was that there was concern expressed in Ryde over the number of housing approvals going through. There was also the whole council amalgamation matter where the new Premier came in and said, "Hands off councils. No pressure on councils to move things forward"—and the message went out.

The practical consequence of that, though, was that the number of housing approvals started to drop by the end of 2018—started to drop. It dropped from in the order of 55,000 and then progressively down to 40,000, then 32,000. And then the COVID pandemic happened. So we went from 55,000 to 32,000, and then COVID and we dropped to 24,000. It should not be of any surprise to anyone in that circumstance that you would therefore have less housing completions three years later and therefore housing price spikes. That is exactly what we have seen. As night follows day, if you reduce housing approvals you will reduce housing completions, notwithstanding that somebody may choose to land bank, as was put. At the end of the day, to stop a person from land banking you should approve lots of approvals in that vicinity. Then somebody will be the first mover and they will capture the market.

Right now the market is there to be captured because land prices have never been so feasible for development. The only reason you would not be developing is because we have not got the approvals. Right now it is incredibly feasible to go ahead and develop, particularly in the outer burbs of Sydney.

The Hon. MARK LATHAM: Yes. That is right. The market would only have to be half efficient at the moment to have a land release boom. You are saying there are inconsistencies in the planning approvals process in New South Wales. Hopefully, the next secretary of the department can fix that up and not be distracted by 28 woke committees a day. My second point is related in terms of affordable housing and your view in your submission that it should not be part of the new RIC arrangements. That was initially the view of the Productivity Commissioner that it is not reflected in the legislation. We all want affordable housing. What is the best solution if it is not going into the RICs?

Mr FORREST: We want affordable housing. We support government expenditure to assist in affordable housing and social housing. We think that that is absolutely necessary to correct market failure. 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.

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The Productivity Commissioner says that the principle of infrastructure fees and charges—and Mr Gadiel, my colleague, referred to this also—has always been that there should be a nexus between the impact of the additional housing supply and the contribution of a tax arising from that. This is the opposite. The people who are trying to solve the problem by creating more supply to drive down the prices of housing are being taxed for the benefit of doing that. He identified the fact that there is no nexus. I do not know why the Government insists on going forward on this basis. It should be coming out of consolidated revenue.

Affordable housing and social housing is a social good that affects everyone in the society, and Government should be looking to consolidated revenue, not effectively the new home purchaser. Because ultimately, if you put a tax on a developer, the new home purchaser ends up not paying for that. The developer will not build a new home or a new set of apartments or a new estate unless they can demonstrate to the bank that they can make money. To do that they have to take all the additional costs and they have to show to the bank that the market can afford to absorb that. At the moment it can. Every additional tax, fee or charge you put on, the cost of the constraint in supply, which the Government created, the market can therefore absorb it. While we have got low interest rates, that is fine. Woe betide when those interest rates start to go up and the market cannot afford it, we are going to collapse in the construction sector and we will also have a whole lot of bankrupts trying to pay off their mortgages.

The Hon. BEN FRANKLIN: Mr Forrest, you raised the issue about delaying the timing of payment from the CC stage to the OC stage. Could you outline for us what benefits there might be for the development industry in continuing with this change?

Mr FORREST: We strongly support this. This was something that was introduced as a temporary measure to support with COVID, and I touched on that in my opening address. Effectively, this payment is required to be made up front at CC—that is when you get a construction certificate, which is required before you start construction. Effectively, that is a big impost on the cash flow of the developer and the construction industry. You are being asked to fund up front before—you effectively have to go and borrow money from a bank and pay interest on that in order to fund the start of your construction, and then you have got to pay for the construction as well. It is in addition to the cost of building whatever it is that you are building. You have got to pay for the council part of it. The Productivity Commissioner recognised that having a tax on the start of work was effectively a constraint on the delivery of that work—that is, it was a constraint on housing supply. We entirely agree with that. We do not oppose the fact that you have reasonable contributions made. That is entirely appropriate and should be the case. But we do support the proposal that it be levied once the construction is completed. If that causes a bit of a cash flow issue, as I said in my opening address, it is possible that Treasury could look to compensate councils for that one-off shortfall in cash that that adjustment might cause.

The Hon. BEN FRANKLIN: Do you think that will lead to a greater supply of housing stock?

Mr FORREST: It already has. During the COVID period it was demonstrated very clearly that there was a lot of nervousness about getting on and starting construction because no-one knew where COVID was going to take us. There were predictions of housing market collapse, of demand collapse, that immigration was going to go. In fact, the opposite happened. It is ironic because no-one actually predicted that there would be a housing price boom. But there was a lot of nervousness through COVID. The construction activity helped the Treasurer keep his books in such strong balance because this measure was put in place to defer the payment of these levies from CC to OC. We think that that is a very positive initiative and it is one that should be supported going forward.

The Hon. BEN FRANKLIN: Finally, a point of clarification: I could not quite hear what you were saying, but in terms of the existing appeal rights for contributions, is that the case for both section 7.11 and section 7.12? I was not sure that there were appeals for section 7.12, that is all.

Mr FORREST: Mr Gadiel?

Mr GADIEL: Section 7.12 is a fixed levy. It is not currently subject to any appeal right because it is effectively a tax. It is just a uniform levy over a particular part of a local government area. The issue I think in this bill is this bill takes that existing tax, which is generally limited to 1 per cent—although Ministers have, from time to time, given approval for particular precincts, mostly city centres, to have higher levies of 2 per cent or 3 per cent and so forth. There is sort of an uncontrolled inflation going on, that these levies are being jacked up. Ultimately, if they become higher than 1 per cent, there should be some sort of appeal right in our view. The Government here and the Productivity Commission have flagged that there will be a broader use of those levies and they will be used to raise more revenue. We would suggest that there should be some sort of appeal right there.

I should also add that another important element of the land value contribution scheme that the Government is introducing is that it can be imposed by a local council in two ways: one, as a cash contribution—

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and that is what people tend to focus on—but also it can be imposed as just an outright land contribution. If it is imposed as a land contribution, what it means normally is that a local council has done a planning process—worked out where it wants its public open space, where it wants its new roads, where it wants its drainage. It will map that, which means it will be disproportionately impacting on some landowners and not others, because they happen to be owning the land where the drainage is or where the new road is going to be. Of course, in many infill areas that could be mums and dads with their 700 or 500 square-metre blocks who might suddenly lose half of their block because it is dedicated as a future road or identified as a future road in a contributions plan.

The Hon. BEN FRANKLIN: Is that not exactly why you—

Mr GADIEL: At the moment when that happens, if the mum and dad are not planning on building a residential flat building then it does not worry them. They can sell their land, other people can buy it and it is not a problem. But under the land value contribution scheme, if they wanted to sell their property—their 700 square-metre block—and half of it had been identified as a road under the contribution scheme, they would actually have to hand across half of their lot, half of their own parcel of land, just to be able to be free to sell the other half. And, what's more, they would get no compensation for it. I do not think that is the intention of the Government but that is what the law says, and that is what it would allow local councils to do. If there is to be a land value contribution that is payable prior to the sale of a property, it must only be a cash burden because at least a cash burden can be equitable across landowners. It cannot be a requirement to surrender land because that will discriminate arbitrarily between different property owners and treat people who are virtually neighbours in quite different ways.

The Hon. SHAYNE MALLARD: There are two things I have picked up from my colleague's questions. In the evidence she gave answering questions during the earlier session with the councils, Ms Barone raised the issue of development companies going broke at the end of the development process, and therefore the councils are unable to recoup that development levy, which is taken up front at the moment as the construction certificate when they get their OC. Do you want to respond to that, Mr Forrest?

Mr FORREST: I think it is an anomaly. If the building is being built and then the company goes broke, somebody is going to buy it, and before you get an occupation certificate for it to be occupied, you will get the money. If there is no-one there to occupy the building then there is no impact on the infrastructure, so you do not need the money. The fact of the matter is we do not have buildings all around Sydney sitting completely empty without an occupation certificate because builders have gone broke. It just does not exist. If somebody buys it, they will have to pay the levy when they buy and they will not get an OC. Therefore, it will not be occupied until they have paid it.

The Hon. SHAYNE MALLARD: You did make reference to dodgy certifiers, which is a big issue for the local government sector.

Mr FORREST: I accept that, but ultimately you do not get your occupation certificate until such time as you can demonstrate that you have paid the local council the money. I think that is something which the Government has foreshadowed and I was expecting that that would come through the regulations that are associated with the bill. That is something perhaps you could ask the Minister about when he appears. But I do not believe that the matters that Ms Barone referred to this morning—and I watched the evidence that she gave—is actually a likely scenario because ultimately whoever owns the building when it is occupied will be required to pay that money and so it will be paid.

Mr GADIEL: Can I just say, it is actually an impossible scenario. It is not just unlikely; it is just impossible. I have never encountered it. The reality is once you have a near-complete or half-complete apartment building or other residential building, you need to realise the value of it. If it is secured by a lender, the lender will exercise the sale of the property. The value of the property is represented by what can be achieved once an occupation certificate is issued. If that levy is never paid, the occupation certificate will never be issued. The scenario simply does not arise and it is not something I have ever encountered in my 20 years working in this field.

The Hon. SHAYNE MALLARD: The council's bank—

The CHAIR: Sorry, we are over time.

Mr FORREST: I blame Dr Cameron Murray.

The Hon. SHAYNE MALLARD: There was a lot of talking from the witnesses.

The CHAIR: Which was all very informative. Thank you very much to the witnesses who have just appeared.

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(The witnesses withdrew.)

(Short adjournment)

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MARK DEGOTARDI, Chief Executive Officer, Community Housing Industry Association NSW, affirmed and examined

MICHAEL CARNUCCIO, Senior Policy Officer, Community Housing Industry Association NSW, affirmed and examined

JOHN BROCKHOFF, Policy Manager, Planning Institute Australia, affirmed and examined

SUE WEATHERLEY, Chair, Policy Committee, Planning Institute Australia, sworn and examined

LAUREN CONCEICAO, Acting NSW Executive Director, Property Council of Australia, affirmed and examined

ROSS GROVE, Western Sydney Regional Director, Property Council of Australia, sworn and examined

The CHAIR: I welcome our next witnesses. Thank you for joining us under these circumstances. I take it that each of your organisations will make one opening statement between you. The Community Housing Industry Association will go first. Who would like to make the opening statement?

Mr DEGOTARDI: Good afternoon. I begin by acknowledging that we are gathering on Aboriginal land, in my case the land of the Gadigal people, and I recognise their Elders past, present and emerging and any Aboriginal colleagues with us today. The Community Housing Industry Association [CHIA] in New South Wales is the peak body for community housing providers, which are registered not-for-profit housing providers that currently own or manage around 51,000 homes across New South Wales for individuals and families who cannot afford to rent or purchase a home in the private market. 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. The obvious priority for CHIA NSW and its members is to ensure that planning and infrastructure contribution systems deliver an adequate supply of safe, affordable and appropriate housing across the State. We were encouraged to see that the bill retains the ability of local council's 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. In our view, affordable housing contributions are an efficient and appropriate mechanism for delivering housing for low- to medium-income households. Effective affordable housing contribution schemes provide certainty to the community and developers, allowing costs to be factored into the purchase price of land.

It goes without saying that we desperately need more affordable housing across the State. This is no longer solely a metropolitan issue. Regional housing markets are now at crisis point. To us, it is vital that local councils across the State are supported to engage with community housing providers and others to build more affordable housing—much more than is currently being delivered. Local councils know their local communities better than anyone. It is important, therefore, that all local councils have the opportunity to raise funds for affordable housing in their LGAs and that the process for implementing affordable housing schemes is facilitated, not frustrated by complexity and cost. While the bill retains affordable housing contributions mechanisms, the implementation of these schemes can be complex and time consuming as councils need to first amend their LEPs. Our strong recommendation is that this process is streamlined and fast-tracked.

Councils need to also be provided with resources and support to ensure that schemes are established in a timely manner. Delays in the implementation of the schemes will lead to missed opportunities and the delivery of much-needed housing across the State, and we just cannot wait. The Community Housing Industry Association NSW—CHIA NSW—also argues that social and affordable housing is exempted from other infrastructure contributions. The New South Wales Government has of course indicated its intention to produce a simple, clear, standardised exemptions policy. This will be enacted through regulations or ministerial directions. Exempting social and affordable housing from infrastructure contributions supports its feasibility and ensures that providers like community housing providers are strongly positioned to continue building the social and affordable housing needed across New South Wales.

Finally, we note that the bill proposes to reduce time frames for councils reviewing their local strategic planning statements from seven years to five years. This is welcomed and will bring local strategic planning in line with review time frames for State and regional strategic plans. We strongly recommend that the Government look at ways in which strategic planning can be improved further so that there is better coordination between land use planning and infrastructure planning at all levels of government. Thanks for the opportunity to be here today.

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The CHAIR: We will move to Planning Institute Australia [PIA]. First, I remind everybody to please be on mute unless you are speaking. There was a bit of feedback during the presentation.

Ms WEATHERLEY: The Planning Institute is thankful for the opportunity to address this inquiry. By way of introduction, PIA represents the planning profession. Many of our members are experienced in the development of and application of development contribution systems to fund and achieve identified planning purposes. Our members come from a very broad background, including both the private and public sectors. The Planning Institute's working group contributed a detailed submission to the NSW Productivity Commissioner review in 2020. We have tabled a copy of that submission. PIA informed and supported the overall majority of recommendations from the commission and was pleased that the Government broadly accepted those recommendations.

PIA believes that the success of any planning system relies on the quality of the strategic planning. We strongly support early strategic planning to identify and resolve infrastructure needs prior to rezoning of land. That is a critical element of this legislation. Specifically, PIA advocated for and supported up-front infrastructure contribution plans as part of the rezoning process; direct land dedication mechanisms; increases to the 7.12 maximum contribution rate; standard charges for State infrastructure, which is the proposed regional infrastructure contributions; recognition of local infrastructure funding distortions because of rate pegging; and the fact that existing transport contributions for major projects is in fact a form of betterment charge. However, we also recognised lost opportunities for reform and identified issues that required further attention.

There is no single plan for growth areas, so we must make sure that local and State contributions are integrated. There is little opportunity for value capture through planning agreements, limited treatment of affordable rental housing schemes and more accountability is needed for infrastructure delivery by both State and local governments. We also identified reforms and concerns that needed to continue to be monitored. Regional infrastructure contributions governance arrangements do not appear transparent. Implementing 7.11 local infrastructure contributions reforms the essential works list. The fact that it excludes community facilities is a very outdated view of local infrastructure needs of communities, as is the proposal to defer contributions payments to occupation certificates. We remain concerned at the overall financial impact and resourcing capacity of councils, State Government and industry to ensure delivery of these reforms.

For those supportive of the initiative, PIA was particularly interested in the extent to which the bill reflects the intent of the recommended reforms related to the direct land contribution mechanism. Direct land contributions have the potential in most cases to result in far better value to the community than monetary contributions alone so long as the land can be dedicated to the community, as that which is set out clearly in a structure plan, and not merely the land left over or remnant parts of it. Early contributions or equivalent provisions would address the issue of subsequent land cost inflation. By looking at the Victorian example with the 5 per cent land contribution, it is clear further measures should be pursued to address land valuation escalation through the rezoning process and also consider equity between landowners, which I think was a submission in the previous part of this inquiry.

It is almost perverse, when you think about it, that the rezoning of land that drives the need for additional infrastructure requirements is also that which drives up the value of land and makes acquisition in some cases almost impossible. I can provide the inquiry with an example. The rezoning in Epping that was led by the New South Wales Government will double the population to about 40,000 in that suburb. They have identified a small amount of land for acquisition—only 6,000 square metres. The value of that land post-rezoning escalated to somewhere between \$60 million and \$120 million, yet the development contributions to be collected through the total suburb was less than \$35 million, which meant acquisition of any land was basically cost prohibitive.

PIA agrees that the bill addresses the right issue in terms of this land acquisition, but it is not able to comment on the complexity of the mechanism relative to alternatives such as the Victorian or the ACT models that have also been quoted in this inquiry. The accounting trail is complex and will require strong planning and administrative capacity in councils. Ten per cent is a somewhat arbitrary figure and local conditions may in fact require a larger contribution. The likelihood of the mechanism being used for broader value capture purposes unrelated to the intent of 7.11 contributions plans are unlikely due to the requirements to prepare a 7.11 plan for designated areas and undertaking the necessary structure planning to identify that land.

Ms CONCEICAO: I thank the Committee for the opportunity to present the Property Council's view of the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021. This bill comes as a result of the New South Wales Government's commitment to implement the recommendations from the NSW Productivity Commissioner's review of infrastructure contributions in New South Wales. As the peak industry body representing property owners, builders and developers across a wide range of asset classes, we welcome the commitment made by the New South Wales Government to the comprehensive reform of the State's

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contributions framework, a framework which is the source of frustration for both industry and government stakeholders alike. Our members have told us that, due to the uncertainty created by the current framework, local councils are perpetually updating section 7.11 contributions plans, leading to new cost imposts on housing and development. The introduction of plans that cost too much, or the uncertainty created by not knowing costs, has a distorting effect on our markets.

When costs are targeted, fair, and known up front, industry is better positioned to take them into account and can incorporate these expenses into its forward planning. When these plans are not up front and certain, the same assumptions cannot be made. This can lead to business decisions either being made with increased risk or the deferral of investment until more certainty can be established. This is particularly the case when spot rezonings are approved with satisfactory arrangement clauses inserted into them requiring an unspecified contribution to State infrastructure to be made at a later date. Likewise, the local councils, noting a number of which are also members of the Property Council, are similarly frustrated with the current framework.

The simple fact is that the section 7.11 contributions plans are not structurally capable of keeping pace with the land acquisition costs of the fluctuating property market. This is a result of contributions plans that do not fully recover the cost of land acquisition needs that are needed for the roads, stormwater drainage and open-space infrastructure. The consequence of this revenue shortfall can stall expenditure and place a strain on other council revenue sources. Responsible councils will seek to update their plans to factor in different, and usually higher, land costs. Contributions have been capped since 2009 and in greenfield growth areas this means councils need to approach IPART to consider a plan above the cap. This process involves a lot of processes, consideration, exhibition, referral and ministerial endorsement, to say the least.

By the time a new plan comes into operation, the market has moved and councils are getting ready to prepare for the next application to IPART. This places a significant burden on the strategic planning resources of councils. It fails to effectively collect or deliver infrastructure and it hinders the smooth supply of housing to the market—a crisis that we face across New South Wales today. These are only a few examples of the way the current system is failing both the Government and industry. The New South Wales Productivity Commissioner's report examines these frustrations from all angles and charts a course for reform which not only benefits both Government and industry but lifts up the objectives of certainty and simplicity, which is the key to ensuring capital has the confidence to translate into housing and jobs activity across New South Wales.

The bill before you presents a mixture of blessings. It represents one part of a wider reform agenda. What is before you is the legislative machinery required to implement the Productivity Commission's recommendations while we are aware that there is a large body of work that sits underneath that. The Productivity Commissioner has developed an implementation plan, which is spelled out on page 124 of its report. It sets a clear time frame for the expected implementation for each of the aspects of reform. For the contributions reform to be successfully and mutually beneficial to all parties, all aspects of this were meant to be delivered. This extends beyond the contributions bill before the Committee and into the Executive branch of Government. Actions include the preparation of regional-specific regional infrastructure contributions, the lifting of the cap, IPART costs benchmarking and the integration of local infrastructure contributions systems in the integrated planning and reporting framework for local councils.

A partial delivery of this reform task will not give the mutually beneficial results sought for all stakeholders. This is an undeniable temptation to take a pick-and-choose approach to the overall package. The risk of partial delivery is that a win-lose outcome will either stifle development or stifle infrastructure. Both of these outcomes represent a poor social and economic outcome for the people of New South Wales. The Productivity Commissioner's report seeks to have these legislative amendments in place by 1 July 2022. We have enjoyed a productive working relationship with the department through their external advisory group as they rapidly move towards the implementation of this time line, mindful of feedback from local government planners and industry. On the basis that the New South Wales Government delivers its commitment to implement all recommendations of the Productivity Commissioner's report, the contributions bill has our full support. We look forward to assisting the inquiry. I thank you for inviting us along today.

The CHAIR: Thank you very much. I believe that is the opening statements out of the way, so we will proceed to questions now from members. We will start with the Opposition.

The Hon. ADAM SEARLE: While the legislation seems to have broad support across the spectrum of stakeholder interests on the issue of securing or getting a share of value capture for improved land values and having some of that go back into providing infrastructure, a number of the drivers of the overall scheme are not yet known to the community or to members of Parliament—that is, there seems to be an important role in the bill for regulations to fill in many of the gaps and details. There is also a significant role to be played by directions to be provided by the Minister. A number of stakeholders have told us that absent these details and absent seeing the

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directions and regulations in a draft form, it is very difficult to assess what the overall scheme will look like in practice and therefore overall that will lead to an improved situation. Do any of the witnesses have a view on whether or not those details should be provided before Parliament considers the legislation?

Ms CONCEICAO: Can I speak on that?

The CHAIR: Yes. Also, just so you know, it is quite good if you possibly indicate by raising your hand. I can see you all on the screen here so we might go that way. Ms Conceicao, we will go with you and then with Ms Weatherley.

Ms CONCEICAO: Thank you, Chair. I will address that issue. As per our opening statement, we strongly believe that the package as presented by the Productivity Commissioner, if passed in its current form, has our full support and we have strong faith in the capabilities of the department to be able to deliver the regulations and the supporting infrastructure required to be able to deliver the Productivity Commissioner's report. We have good working relationships with the department through a working group that currently is working through all the underlying detail that sits underneath this. 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.

The CHAIR: Ms Weatherley?

Ms WEATHERLEY: I think that there would be value in having a better understanding of the complete package and how it all works together. It was not just the ministerial directions and the regulations; there is also some additional work to be done. I think we need to consider whether or not that additional work should be done earlier rather than later, so that also can be examined. So, while supporting the principles of the bill, some of the detail does need further monitoring and care.

The CHAIR: Can I just jump in there just in relation to the working group that it was just mentioned that the Property Council sits on? Were you saying then that the work that Ms Weatherley is saying needs to be done on the potential regulations and ministerial directions, is that being done now within that working group? Is that where that is happening?

Mr GROVE: The working group effectively provides updates and feedback, I suppose, whether it likes it or not, from a number of peak bodies, such as Local Government NSW, the Planning Institute of Australia, Urban Taskforce, the Urban Development Institute of Australia, the Property Council—I do not have the full list. I know that there are at least two or three other stakeholders around that table. It meets on a regular basis. I would not say it puts direct input into the regulations. There are a number of technical working groups that are spinning off that. I understand Marcus Ray is coming up to speak to the Committee shortly. He is probably better positioned to talk about how that stakeholder engagement piece works over the course of the next couple of months.

The Hon. ADAM SEARLE: Just further to that, a key part of the recommendations made by the Productivity Commissioner was to permit councils that are experiencing growth to have their rate base extended proportionately to the growth in population. A key part of that work as to how that might look is still being undertaken by IPART and we will not see that work until September. That is another pretty important missing building block from the scheme. Should we similarly be concerned about the absence of that in terms of considering the legislation at this early stage, or would it be better if we had all of the information while discussing the legislation in the Parliament?

Ms WEATHERLEY: The only comment I would make on that is I think the local government representatives made some impassioned submissions this morning, which I listened to. The key concern in local government is that the premise is that local government would be no worse off as a consequence of change to the rate system and the combined changes to the infrastructure contributions. I do not know that you can come to that conclusion without having understood what the change to the rate system is. All I heard when I was listening this morning were submissions around population growth. It is not just the number of people living in a local government that drives growth in an area. It may be a major CBD, it might be new schools, new tourist accommodation. How is all that growth going to be assessed in terms of future rates as well? I think the submissions of Local Government NSW and other councils have been to decouple the two but the infrastructure should stand on its own. I think there are interesting arguments both ways. But without knowing what the change to the rate system would be, I am not sure how you can come to the conclusion that councils will be no worse off.

The Hon. ADAM SEARLE: On that, obviously the councils themselves say they will be worse off. The Productivity Commissioner and other evidence before us have suggested that over a period of time the councils will, in fact, have more revenue to deal with infrastructure. It is not clear whether developers will be paying more in terms of infrastructure contributions under this legislation or whether simply other landowners

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will be sharing some of the existing burden, taking some of that burden off developer interests. Again, it is also not clear whether there will be an overall increase in money for infrastructure under this regime. How can we work through all of those issues and reach a conclusion on what the answers to those questions are based on the current information we have in this bill? Wouldn't it be better to try to get some more detail around that before Parliament signs off on any plan?

Ms WEATHERLEY: I am not sure if that was a follow-up question for me, but I would say I think that is a decision for the inquiry, isn't it?

The Hon. ADAM SEARLE: Yes.

Mr GROVE: I think it is fair to say that it goes back to Ms Conceicao's initial comments. This is very much the framework to deliver a reform package, the majority of which would be delivered by the Executive arm of government. This is an exercise in faith on the part of industry. You are clearly getting that feedback and the concern from local government this morning as well. Part of that reform has already started. I think some of the beneficial parts of that reform have already come through to local government in the review of criteria for assessing 7.12s and what needs ministerial approval and what doesn't. The question mark over whether contributions go up or down very much relates to what the state of play is for a particular development now versus another kind of development on today's terms as well.

I think some of the more extreme areas where councils are under a lot of strain, such as Blacktown, I think there are some processes which will improve their overall position. From an industry perspective, we are looking at a bill that seeks to provide a regional infrastructure contribution, a transport contribution, strategic biodiversity contributions, along with a raft of other measures that would drive upward pressure on the overall contribution paid by industry. If you are in an area governed by a special infrastructure compact, that may be a reduction but a lot of Sydney is going to be paying new taxes for the first time under this proposal if it goes full-way through. The benefit for industry and the reason we are supporting it is because it means that we are not going to be held up with special satisfactory arrangement clauses or future special infrastructure contributions being drafted, exhibited and quite often stalled by government. Knowing what the cost is up-front is the benefit we see to it.

The Productivity Commissioner's modelling made reference to a \$600 million a year revenue, based on some of its figures, from the regional infrastructure contributions in that space. In our briefings with the department, our understanding is that special infrastructure contributions right now are collecting on average about \$50 million a year. That is a significant upswing in just one particular revenue area. It is really a question of if your development is inside a significant infrastructure contribution [SIC] zone then maybe it is higher, maybe it is not. If it is outside a SIC zone, at least with the regional infrastructure contribution, you will not be stuck waiting trying to find out what your contribution may be in the future. You will be able to budget that in and move or not move based on those realities.

The Hon. ADAM SEARLE: My final question is to the community housing association around its submission. Apart from arguing that social and affordable housing developments should be exempted from infrastructure contributions—I think I understand that that is referable to the limited means of your clients and your very small margins—you also argue that there needs to be incorporated in the planning and delivery processes around infrastructure a consideration of affordable housing requirements as part of that infrastructure planning process. That is presumably not contained in this legislation. How should we deal with that issue or that objective?

Mr DEGOTARDI: The bill does allow for affordable housing contributions to be raised in its current form, although how and why and how much is, as you have already pointed out, the subject of question. For us, what is really important is that we begin, at all levels of government, to think about housing as infrastructure, and certainly affordable and social housing as critical infrastructure. We do not think that that is what occurs at the moment. Certainly various State planning instruments around affordable housing have been implemented but they are not working very effectively for a whole range of reasons. We also find ourselves in a situation now in both metro and regional areas where affordable housing is becoming a critical issue. Others have used words like "crisis". It has always been a problem in the Greater Sydney area; it is now a problem everywhere. What we want is a scheme that allows local councils to respond to that by raising, where they deem appropriate, affordable housing contributions so that affordable housing can be built sooner rather than later and in larger proportions than it currently is.

The Hon. MARK LATHAM: To the two Property Council representatives, one of the themes in your submission and presentation today is that these reforms simplify the developer contributions system. Do you really think that is the case? I have studied these for days on end. You need a Rosetta Stone to decipher some of the stuff here. There must be huge transition costs in the development community understanding what these new arrangements will mean and all the uncertainty of what the regulations and the ministerial directives and the

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IPART reports might hold for the future. If you were sitting up on 10 hectares in western Sydney in one of these released areas trying to work out what the hell this means—it is very hard to argue this is simplification, isn't it?

Mr GROVE: I think it is a question of—if you look at growth areas such as the north-west growth area around Blacktown, you have councils that have extraordinary development costs per house. They run up quite substantially, and I think the process of running up against a cap, seeking permission to go above a cap, winding up with a shortfall, not being able to address key strategic questions, that is obviously a challenge for council. I am from local government previously, same as you, and I have dealt with from one end—industry is also trying to build. If you are able to get a cost structure which forecasts land costs and you are not having to update your contribution plan to reflect a new cost of land every time the market moves, I think that is a win.

I think there are a number of other elements around the creation of SICs, or the drafting of SICs, and then decisions by government to just sit on the SIC and consider it for too long. All of those questions tend to hinder development rather than make it happen. We would much rather a system where you know the cost up front and then can proceed or not proceed on the basis of that cost. I think when we are briefed on the changes and we assess them, we look at the planning department's five criteria when they considered the reform: it is certain, transparent, simple, efficient and consistent. Those are the questions which if you apply that five key criteria to any of the reforms in the Productivity Commissioner's review or the bill itself, that is the output that it seeks. If we delve into specific areas, I can certainly tease out how some of those areas make the system a lot more simpler for industry.

The CHAIR: Does the Planning Institute Australia also want to respond to that question?

Mr BROCKHOFF: I will just make the point that there is certainly complexity in the bill, particularly if you look at the direct land contributions component. That is a new element that deals with ensuring that there is a mechanism to address land price escalation. In the absence of the complexity to deal with that issue, you would have one of the recommendations of the Productivity Commission not being addressed. That is an important barrier to be resolved being that the effect of rezoning on the escalation of the price of land and the inability of the public to secure land for important public purposes to due to the escalation of price. It is appropriate that some mechanism in the bill address that situation. Dealing with the issues around equity, around the application of the just terms Act does result in complexity. I think one chooses to address this issue and deal with the complexity or one chooses not to address it. The Planning Institute would look forward to working with the Government in the regulations and guidelines to ensure that this can be managed.

The CHAIR: Do you have any suggestions to the Committee now as to how that could be managed or fixed within the legislation, Mr Brockhoff?

Mr BROCKHOFF: I am not a legislative drafter. I have looked at the Victorian situation and see some advantages with its model. But I am also aware that there are legal and equity issues that require the work of a group, particularly how the just terms Act operates in this context, and I would defer to others.

The Hon. BEN FRANKLIN: Mr Brockhoff, you talked about the land contribution model proposed in the bill being drawn from similar provisions used in Victoria. Do you know how successful they are down there? Do you have any comments to make about that?

Mr BROCKHOFF: I do not have evidence that will be compelling for this inquiry on how that is performing.

The Hon. BEN FRANKLIN: No problem at all. My questions are broadly to the Property Council of Australia to start with. Ms Conceicao, to go back to first premises, could you give us an understanding of what the risks of investment are currently that come with the uncertainty in the existing system?

Ms CONCEICAO: Absolutely. The risk of investment currently as we understand it is first and foremost acknowledging that there is a housing supply crisis across New South Wales both at the affordable level and also more broadly. We know from the *NSW Intergenerational Report* and details out recently that that undersupply was at 100,000 houses five years ago, it has not been delivered and we have not caught up, and then from the Metropolitan Housing Monitor figures out in the past two weeks that we are not even delivering the annual need of housing to meet targets here in New South Wales—and that is before we even get to reopening the border and overseas migration in the back half of 2022.

We have a housing supply crisis and we have capability within our sector to be able to deliver on that. What is missing is the unlocking of land supply and also the planning system and support and tax system that makes it a viable investment for developers to be able to develop here in New South Wales. We have mentioned the Victorian system a couple of times here. We have a residential development council at the Property Council, which is made up of some of the largest development companies in the residential space across the country. Their

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investment boards make decisions as to where they build the next community, where they unlock the next set of houses. 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, and I take Mr Latham's comments on board in relation to: 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. It is also not clear to other residents in those communities or in those LGAs. It is not clear to local government what their revenue streams are, giving them confidence to be able to invest in the infrastructure that is so desperately needed. It is not clear to broader New South Wales individuals who require the need to be able to have choices and decisions in the locality, the diversity and the types of housing and living that they want to live in.

This system is not clear. It does not provide confidence for developers to be able to work and deliver and create the housing that we need. This bill and this system creates an opportunity to be able to shine a light and give clarity both to developers, council and the general public and the ratepayers on the mechanisms for our future infrastructure and the critical infrastructure that people need to be able to live in a comfortable home, access their local community, city or jobs, and to be able to live in a lifestyle that we deserve to do so here in New South Wales.

The Hon. BEN FRANKLIN: I am glad you raised the issue of clarity. It gives me an appropriate opportunity to move on to Mr Degotardi. Would you agree that it is actually difficult to have any clarity on data about how affordable housing is delivered across New South Wales at the moment?

Mr DEGOTARDI: Yes, you will get no argument from us on that front. There are a couple of reasons why. The first of those is that there is no-one really looking over the shoulder of those who are using things like the affordable housing SEPP to see that the affordable housing that is delivered under a concessionary arrangement is actually delivered and maintained as affordable housing for the period of time that it is supposed to be. There is no-one actually collecting that evidence or data, so once the concession or the approval has been granted that is really the last of the engagement with the regulatory system. We know that in our sector, the affordable housing that is managed by community housing providers continues to be delivered as affordable housing and will be managed past the 10-year time frame because we are a not-for-profit structure and that housing is retained in that way. But there is no clarity in other parts of the development sector.

Secondly, I would say to you that there are no targets or reporting that would make us know that we are hitting whatever requirements we have met, so the Government does not have a formal housing target. There is no reporting of net growth of affordable housing across the State in regional or metro areas. As has been widely documented in recent times, the impact of COVID-19 and people moving out of city areas to regional areas has been quite catastrophic in terms of housing demand.

The Hon. BEN FRANKLIN: Would you also agree that a third reason might be the introduction of entirely different schemes in different places, which makes a like-for-like understanding difficult?

Mr DEGOTARDI: That is possible, of course. But frankly I think the problem we have got to face into is that the demand for affordable and social housing, which we also provide, is actually driven by market failure. I do not mean that people are not doing the job that they set out to do, it is just that to provide a subsidised form of housing there has to be appropriate subsidies to allow the housing to be built. That can be built in the social housing context through government contributions in affordable housing. It can be built in both that way and through planning concessions and the like. The reality is, though, that there is not any money in developing affordable housing, so I am not surprised that private property developers are less engaged in that than other forms of housing. What you need to do is create appropriate incentives or appropriate requirements to build that housing. Lots of local councils that we talk to are interested in building affordable housing, but at the moment the complexity of the system is preventing them from engaging with it.

The CHAIR: We might just move on.

The Hon. BEN FRANKLIN: I just have one final question, if I may, Madam Chair. I think the Productivity Commissioner has suggested that we need to get a better idea of the state of play broadly in the affordable housing sector before we progress with reform and change. Could you comment on that suggestion? Is that something that you would agree with?

Mr DEGOTARDI: Yes, I think more information is useful and absolutely should have better clarity. We have certainly done some work in that regard. But it cannot be a barrier to doing anything. We did a report

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with City Futures a couple of years ago that would indicate that we need about 300,000 homes of affordable housing, so please do not tell me to stop while we wait for an inquiry by the Productivity Commission to get all of the evidence that is going to absolutely convince everyone that it is required. We need to get going with it now. You will forgive me for saying, "Let's get on with it". Yes, let's get as much evidence as we can, but we cannot fiddle around with this.

Ms CONCEICAO: I would like to reflect Mr Degotardi's comments there in that affordable housing, like all housing, is in huge undersupply here in New South Wales and it is a critical issue. From our perspective, the opportunity to deliver affordable housing is through the incentivisation that we previously discussed. We cannot tax affordable housing into existence, particularly not when we have a continued undersupply of housing more broadly. I would like to encourage the Committee to consider how we can incentivise and grow the affordable housing market through growing supply rather than cutting it down and allocating it in that way.

Ms WEATHERLEY: I think that when there is a substantial upzoning of land, that in itself should form part of that incentive. The notion that affordable rental housing is something as well when land is upzoned, let us not forget that that in itself is a substantial incentive to the landowner or the future developer of that site.

The Hon. SHAYNE MALLARD: It is a disadvantage of being one of the last to ask questions because they have all been asked, but I wanted to round-up on that issue of the complexity of the current developer contributions system. Many of the Committee members—the Hon. Adam Searle and others—have had senior local government roles. I have too. I would be interested if you could just inform the Committee of the complexity of the current developer contributions system and why doing nothing, as the Minister said, is not an option. It needs to be reformed to unlock the investment in housing. Just touch on the complexity; I am sure that the Property Council of Australia can do that.

Ms CONCEICAO: You are right. The system as it currently stands is extremely complex, but there is a whole range of things that go into the infrastructure contributions bucket at the moment, including the section 7.11 and 7.12 plans.

The CHAIR: Sorry, I will just get you to pause there. If everybody could mute, please. I think someone might not be muted. If you could just start again; that was quite muffled.

Ms CONCEICAO: Absolutely. Is that better?

The CHAIR: Yes.

Ms CONCEICAO: As I was saying, the system as it currently stands is quite complex because it is made up of so many parts. We have both the State and local infrastructure costs that are required and there are the section 7.11 and 7.12 plans. In addition to all that, we have voluntary planning agreements brought into place and there is an extreme lack of clarity and, I guess, transparency in what is involved in those planning agreements. That does two things. One, it undermines the confidence of property developers in the system in knowing what the costs are and being able to factor in viable investment options. But two, I think it also undermines the relationships between property developers and local councils by division of local constituents in communities.

If we do not know what the relationships are between developers and local council, that is where the opportunity for murky decisions gets made. I think, as ratepayers and as community participants, we all deserve to have confidence in large corporations that are spending money, where that money is going, who our public officials are, what those agreements are in terms of receiving that money and what is being delivered on the other end. For some time, there has been an argument that a lot of infrastructure contributions are being collected and not delivered. That reflects poorly on the property developers in those areas.

When property is developed and the appropriate infrastructure is not delivered alongside it, it reflects badly on the property development industry and the communities that receive that development without the infrastructure. But concurrently, you have got councils that are collecting infrastructure contributions that are not at a level or do not have the ability to spend that on the infrastructure. Holding onto those contributions is not serving anyone. So, 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. This bill seeks to bring that level of light and confidence to this system.

Mr BROCKHOFF: In terms of complexity, one of the reforms that PIA advocated for was a single plan for a growth area—an integrated local and State plan for a growth area. That is an opportunity that should not be lost. PIA will continue to look for that reduction in complexity by looking particularly for specific growth areas in greenfields or renewal areas to have that integrated plan. The other aspect that talks to complexity is that in the absence of a general value capture mechanism, you see individual voluntary planning agreements being used as a de facto means to capture value. And that is understandable given the lack of a generic value capture

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system, but each of those individual planning agreements does take time and cost and is complex. The existence of a generic or a general value capture mechanism that deals with windfall value uplift would have some public interest advantages but is not part of the scope of this bill.

The CHAIR: Ms Weatherley, did you wish to comment?

Ms WEATHERLEY: I was just going to add to the point that one of the worst words you can probably use to describe the current system is "simple". It is a very complex system that we currently have. But what makes it worse and what is probably not completely understood is that lack of clarity. I just want to support the Property Council on that point. The uncertainty and the lack of clarity about actually what is going to have to be paid as development contributions is actually a significant impact on the opportunity for development to take place. There is a thing called—a strange thing—satisfactory arrangements, which is just a clause added in to an LEP that says, "We won't tell you how much you have to pay, but we as a State government agency think you need to upgrade some of the roads and some of the other State infrastructure in the area. So when you go to develop, we will tell you then how much you have to pay."

One of the clear benefits of this legislation—and I will not disagree that it is a very complex and detailed piece of legislation. One of the real advantages of this is to take that away. The removal of satisfactory arrangements is uncertainty and the lack of clarity about actually what is being asked of the future developer so that there is proper pay and an appropriate approach to how much should be paid. Again, I reiterate that Mr Achterstraat's submission was clearly along the line that there needs to be a single plan that has both the regional infrastructure and the local infrastructure in it so that it is clear and transparent what is required to be paid by the developer.

The Hon. SHAYNE MALLARD: The next question I want to ask follows on from that and I guess it is almost a Dorothy Dixier. The Property Council defined our planning system as the slowest in Australia. I thought she was going to say the world, but she said Australia. Is this reform of the development contributions complex schemes—will that make a significant contribution to speeding up the planning system and then unlocking housing?

Mr GROVE: I will jump on this one. I think the easiest—it goes back to Ms Weatherley's answer as well. I will give two clear examples of what satisfactory arrangement clauses mean for the industry. Portions of the Parramatta Road corridor have recently been rezoned. In the back of that planning proposal, the approved rezoning is a satisfactory arrangement clause. So if you want to build a block of flats as part of the renewal of the Parramatta Road catchment, you will have to—you have got your local contributions and hopefully that is a 7.11 contribution plan and you can work out what your cost is and go through that framework, and then you have got this satisfactory arrangement clause. You have got to come to an arrangement with the New South Wales Government, which may be completely different to your next-door neighbour's arrangement or the person down the road's arrangement. That needs to be drafted. You have got to get lawyers to go through it at the New South Wales Government level or at the other level and in the meantime you have obviously got to do some form of probity in that process as well. So it is scary for the developer and scary for the officers approving such an agreement. Our submission details what Nick Kaldas and the ICAC have to say about that sort of process.

You have also got that not just for housing—this is not just a housing issue. You have got a contributions challenge in the Mamre Road industrial area out in western Sydney. That was recently rezoned. There was no SIC available at the time, so the Department of Planning has inserted the satisfactory arrangements clause into the back of that. New employment lands, which are places that are designed to create jobs or facilitate the logistics challenge of Sydney, are also having to deal with—in addition to managing exactly how they design their building, there are some complex planning restrictions in that space, which are another subject. But they also have to work out how much they are going to pay the State Government, which may or may not be different for their neighbours. There is time to that, there is a cost to time, and there is risk. There is risk for the proponent and there is risk for the Government.

The CHAIR: That is the end of this session. Thank you very much to all of our witnesses who appeared. I do not believe any questions were taken on notice.

(The witnesses withdrew.)

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The Hon. ROB STOKES, Minister for Planning and Public Spaces, before the Committee

MARCUS RAY, Group Deputy Secretary, Planning and Assessment, NSW Department of Planning, Industry and Environment, affirmed and examined

The CHAIR: I welcome our next and final witnesses for this hearing. The Government did not make a submission to this inquiry, so I certainly hope there is an opening statement, Minister, before we proceed with questions.

Mr ROB STOKES: Thank you for the opportunity to make a contribution toward this Committee. I appreciate that it is Friday afternoon and it has obviously been a very busy day. I will effectively make an opening statement and I am happy to take whatever questions you have. But also Mr Ray is obviously a master of the detail here as well. He can assist me in relation to some of those matters. Effectively what the Government is seeking to do here is for a long time we have recognised that our infrastructure contribution system—that is, the system we have for ensuring that the beneficiaries from upzoning make a contribution toward the costs of the infrastructure that is required to enable the development that they seek to do on rezoned land to actually occur. This has been a system that has been in the too-hard basket for successive governments for a very long time and for good reason: it is a very complex issue and there are lots of moving parts.

Effectively, the system has not changed terribly much since significant reforms were done back in 1991. Of course, community expectations of infrastructure have changed a great deal since that time. In those days infrastructure was fairly straightforward—it was curbs and guttering and local roads and all those sorts of things that you would anticipate from ordinary greenfield-style development. But since the early 1990s we have seen a lot more focus on infill development and we have seen a lot more focus on transit-oriented development around train stations. Greenfield development has become more complex as a result of moving into areas where there are impacts on biodiversity or impacts on drainage or flooding issues or all those sorts of issues, let alone the fact that the further we get away from job centres there are increasing issues with transport and those sorts of matters. So the costs of infrastructure are also going up.

The challenge here is that as land is becoming more scarce, particularly in Greater Sydney, the costs of the land acquisition component of infrastructure contributions has continued to rise. That is really I think the nub of the challenge that we are facing so that we are in a position today where we have tens and tens of thousands of rezoned lots in Sydney. But because the infrastructure contributions required to unlock these rezonings and turn the lots into new housing opportunities and job opportunities were not resolved at the time of the rezoning, they are, in one sense, sterilised until the general taxpayer comes along and pays those costs that, frankly, could have been better apportioned at the moment the public, in the form of the Minister, handed over those rezoning rights to those owners. They were rights owned by the public. There was the opportunity, at that point, of rezoning to really capture some of that value to make sure that that value could contribute toward the costs that the rezoning would inflict on everyone else in the community.

The system, in summary, was broken and is broken. So we thought that the best way to solve this, knowing how difficult it was, was to set out a process where we used the new New South Wales Productivity Commissioner as an honest broker in the process, to go out and talk to people, to come up with a more certain and efficient system, to talk to all the stakeholders, to come up with a program of reform, a suite of things, if you like, that all holds together to have a much more principles-based system and much more certain and efficient system. They reported those findings back in November last year. The Government responded in March this year. A big part of the 29 recommendations hinged on some legislative reforms. Some of those have been done in relation to allowing the population cap to be removed, in relation to allowing councils to collect rates as their population increases. The other bits were freeing up the capacity to have a more certain and efficient system also in the Planning Act. So, really, we are following the bouncing ball of the Productivity Commissioner.

I note that you have received a lot of different evidence from different people throughout the day. Unsurprisingly, those different elements have had different perspectives on the reforms, which is entirely fair enough. You will often find, I suppose, that the councils will be saying some things, the development lobby will say the opposite and vice versa. In one sense, my appeal to you is that we know in one sense the things the councils want that the developers will not want, and the things the developers want that the councils will not want, which is why the 29 recommendations are a package. The whole thing hangs together. So, really, every bit speaks to each other. That is why we are starting here. I note some of the concerns related to the fact that this is, in one sense, a bill that allows us to go and flesh out the detail but not all the detail is provided, locked into the legislation. What I would say to that is—

The CHAIR: Minister, could this be your last before we go to questions?

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Mr ROB STOKES: Really quickly. There are so many issues to raise.

The Hon. BEN FRANKLIN: With respect, Madam Chair, I say that the Minister has only been going for eight minutes and is literally answering directly a number of the issues that have been raised today. I think it is not unreasonable that he has a bit longer to go through some of these things. You said yourself that, because the Government had not put in a submission, you hoped that this was substantive.

The CHAIR: I hear you, but I think that eight minutes will get into 10 minutes by the time the Minister finishes. A lot of members have a lot of questions. Then he will be able to answer what he is alluding to in terms of everything raised today. I am conscious that he has been given eight minutes. I was giving him enough time.

The Hon. BEN FRANKLIN: That is fine. I fundamentally disagree with that. I think that he should be able to go for 15 minutes. But I appreciate that you are the Chair.

The CHAIR: Fifteen minutes? That is extraordinary. We never have 15-minute opening statements, Mr Franklin. Let us go back to the Minister.

Mr ROB STOKES: I will aim for brevity. The final point that I will make here is that I understand that one of the concerns is why is not all this detail being put in the legislation. The answer to that is, effectively, planning law, as we know, is an enabling Act. It enables the detail to be put into delegated bits of legislation, whether that is a SEPP or whether it is the regulations. The example I provide is that the planning Act enables us to do a rezoning in St Leonards. The St Leonards rezoning is not in the planning Act itself. It is enabled to happen at a later stage. This is the same process. That was, effectively, when this was last visited. When special infrastructure contributions were introduced back in 2006, the same process was followed. But I want to say at the outset that I am very happy to bring the regs or SEPP, as they are developed, back to the Committee so the Committee can examine those things in detail. This is not in any sense designed as any partisan initiative. Frankly, I am just trying to develop an architecture for collecting developer contributions that is fair and certain for whoever is in government at the time it is implemented.

The CHAIR: Thank you very much, Minister. We will turn to questions. We will go to the Opposition first.

The Hon. ADAM SEARLE: Thank you, Madam Chair, and thank you, Minister, for the opening. One of the things that has come through quite clearly from all stakeholders, regardless of their perspective, is a concern, not about the Government's motives or anything like that, but a concern that the legislation, yes, is facilitative, but it is more so than, say, the planning Act, because so much of the understanding about how this would be implemented in detail is not yet known. We do not have the draft directions; we do not have the draft regulations. A lot of that will tell stakeholders and us what the real nature of these reforms will be. Councils have told us that they are going to lose money for infrastructure over time. Productivity Commissioner tells us that that is wrong and they are going to gain resources over time.

We do not know whether developers will be making more of a contribution to infrastructure under this regime or whether some of that existing burden will be shifted to landowners. We also do not know whether the overall level of money for infrastructure for the community will be provided by this regime or whether it is simply sharing out between different players the same amount of money. These are really important factors for us as legislators to evaluate, to work out whether these reforms are good enough. I do not think that there is any dispute about the thrust or about the idea of capturing some of the uplift in land value through rezonings. This is a really big reform and certainly the only chance in this Parliament for us to get to grips with it. We want to make sure that it is done properly. Do you accept those concerns? Is there some capacity to get that detail before us, before the Parliament has to deliberate on the bill?

Mr ROB STOKES: Adam, I get the challenge here. It is a bit of a paradox in one sense because, without the certainty of the capacity to actually deliver on the SEPP or the regs, it would be foolish for me to direct taxpayers' funding into trying to prepare these delegated instruments without knowing whether there is the power to actually introduce them. So in one sense this is setting us down a pathway to developing those details. All the economic modelling we have relied on or at least the Productivity Commission has relied on—suffice to say that this is their recommendations that we have committed to deliver on—is available on the website and can be interrogated there.

But I think the best way for me to proceed is, basically, to provide undertakings. Everything this Committee would like in terms of draft instruments, to be able to interrogate them as they are developed—I am more than happy to do that, because I would actually like to get the benefit of the Committee's insight and to make sure that the stakeholders understand all the issues that are involved. But I cannot prepare all the detail without knowing whether this is going to be an exercise, that I will actually have the power to go down this route in the first place. We also set up an oversight steering committee that has been set up to report to the Cabinet. I am very

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happy for that committee to also report to this Committee, to take this Committee on the journey as well, because I can understand those concerns. But you can also, hopefully, understand that I do not want to commit those resources into what is going to be a very intense process unless I know that, broadly, there is going to be the power to do it.

The Hon. ADAM SEARLE: I can understand your challenge. But as you bring these draft instruments or draft regulations to us, if we think that is not consistent with something, our capacity to improve the framework at that point is a bit challenging for us.

Mr ROB STOKES: What I would say back to that is that a lot of this stuff I could do now. For example, the legislation allows me to interfere and introduce a special contributions regime; I can make my own contributions plans and I can put in a determination or direction without any oversight whatsoever. Actually, this process is much more robust. I want to set up a more robust process. I want to have a SEPP that goes through a process of public consultation. That is why planning legislation allows for such clear public consultation, because it recognises that these changes do not go through the Parliament every time. If they went through the Parliament every time, it would be far too rigid to allow for practical, on-the-ground changes from project to project.

I already have the powers to introduce special infrastructure contributions in a completely opaque way, but that is not what I am proposing to do. I want to come up with a better system and a more certain system and do it earlier, but without the legislative power to go down that track and work very collaboratively with the Committee to do so, then the whole thing really becomes a bit pointless.

The Hon. ADAM SEARLE: Can you tell us whether or not under this regime there will be an increase in the amount of overall resources invested in infrastructure for the community, or will it simply be sharing out between different parties about the same amount of infrastructure funding as currently raised?

Mr ROB STOKES: I can point you to the productivity—in relation to some detail, I will refer to Mr Ray in a moment. I will give him a moment to prepare an answer, but at a preliminary level what I can say is that infrastructure needs to be provided, so someone has to pay. This is about making sure that is efficient and certain and determined as early in the process as possible, to make sure that the people who pay are the people who either use the infrastructure or who benefit from the provision of that infrastructure and that that is identified as early as possible. Because the earlier people are aware of it, the cheaper it will ultimately be. We know from the Productivity Commission that the wider economic benefits to the whole State and to everyone in the State over the next 20 years will be about \$12 billion and it will create more jobs. That is the Productivity Commission's findings. But in relation to specifics, I will refer you to Mr Ray.

Mr RAY: I would draw attention to a couple of things that are in the Productivity Commissioner's report and the modelling that is available on the web, which has been available since I think early December. In 20 years council rates will be, according to the modelling, 6.9 per cent more than they are now.¹ It is addressing one of the issues with the current rate cap, which is diminishing that funding source to councils over time.

Mr ROB STOKES: Can I put a point of correction? I do not think you mean that council rates will be 6.9 per cent more, but that council funding from rates will be 6.9 per cent more.

Mr RAY: From rates. Yes, sorry. And, on the other hand, we have long had issues with those special infrastructure contributions about the ability to collect enough of those contributions to actually fund the infrastructure. This is going to be replaced by the regional infrastructure contribution, which is a broad-based contribution that will allow that infrastructure to be funded in much bigger chunks than the current system allows. I think there are quite a number of initiatives also in relation to enabling councils to borrow more effectively. There are a whole range of measures in this package of 29 that actually are directed to making it easier for infrastructure to be on the ground.

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,

¹ In correspondence to the committee dated 23 July 2021, Mr Marcus Ray, Group Deputy Secretary, Planning and Assessment, Department of Planning, Industry and Environment, clarified his evidence: *'The figure that should be quoted for the estimated revenue increase from rates is 8.9% instead of 6.9%'*.

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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.

The Hon. ADAM SEARLE: Just on that, in terms of extending the rate base for councils in line with population growth, I understand that will certainly help those councils where there is continued growth in the future. It does not assist the council areas that have already experienced significant growth and it does not assist those councils that have either got population contractions or static populations but, nevertheless, have ageing infrastructure. And in tourist destinations in the regions, including where I live in the Blue Mountains, that inability to have proper funding of existing and future infrastructure needs is a real problem. None of that is addressed in this package, so how will those council areas—which cover much of the landmass of this State—be supported?

Mr ROB STOKES: I might start on that one, Mr Ray. The answer to that is that this bill is focused on contributions from developers to pay for the infrastructure required as a result of their development activities. In terms of ageing infrastructure elsewhere, or infrastructure that is required without development occurring, that has to be provided by a different mechanism because, actually, the planning Act does not provide the power to be able to raise a general tax, for example. It is an important point for me to raise here that this is not a tax. As a point of law, this is not a taxation statute, the planning Act, so it has to be directed toward paying for the infrastructure required to support an upzoning. That is what this is all about. Other infrastructure—I am not suggesting that it does not need to be paid for, but this is not the mechanism to do it.

The Hon. ADAM SEARLE: Minister, there are so many more questions I would like to ask you but I have to share the time with other Committee members. I will ask just one more question. Who was consulted as part of the drafting of the bill? Did stakeholders get involved in the drafting of the bill? When was the first time they saw it? Was it when it was introduced in the Parliament? And what was your involvement in the drafting of the bill?

Mr ROB STOKES: In terms of my personal involvement, that was a matter for the Parliamentary Counsel's Office. My legal skills are fairly venerable now, so I would not deign to get involved in drafting of this sort of complexity. But in relation to consultation on drafting, I will refer to Mr Ray.

Mr RAY: Mr Searle, we have an external advisory committee made up with membership from most of the peak organisations and also including Local Government NSW and other representatives from regional councils. We made an offer to take anyone from that group—so there is a group of about 10 or 12 people from a broad range of stakeholders including the Planning Institute—through the draft legislation. That happened about a week or 10 days before the bill was introduced, to the best of my recollection. So that was an in-detail take-through of the legislation, but we had also been talking to those same groups about what the legislation would entail. It was always going to be a framework piece of legislation, as the Minister laid out. There was consultation. Most of the representatives took an interest. Some did not at the time, but the offer was made to everyone and a number of them took it up.

The Hon. ADAM SEARLE: Can you tell us on notice who was invited to have that briefing?

Mr RAY: Sure. I can provide that information.

The CHAIR: I am just wondering, Minister, in relation to the fact that there is going to be full and proper consultation on the contributions reforms package in October and—I think we have talked about this earlier—the full rate-pegging review. We still do not know what of that is coming. What is the Government's reason to have included this infrastructure contributions bill with the budget bills package? Why could you not wait until consultation is undertaken with stakeholders, as many of them are asking, including the property industry, for it to be deferred until then?

Mr ROB STOKES: Thank you for your question. This was originally flagged as part of our planning reform package back in—I think it was November 2019. I then commissioned the Productivity Commission to do the work based on terms of reference back—I think it was in March 2020. Then in the budget, early that year or whenever it was that year—that was an interesting year—foreshadowing these reforms through the budget, we put investment into an ePlanning tool to provide an online calculator of developer contributions in line with the reforms that we had foreshadowed. The Productivity Commission reported in November. Then we came out in March and said we were going to implement those changes.

The first lot were through a local government reform bill, which related to the population cap on rates. Then, because we had foreshadowed in the budget narrative, the year before, a focus on tax reform in relation to contributions, we put it in cognate with the budget because, effectively, it does have an impact on the budget. For example, the Accelerated Infrastructure Fund is currently paying a lot of the gap that will be taken up by a more

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efficient and certain infrastructure contributions system. That is why, because it effectively locks into that broader narrative.

But in one sense, I was very keen to get it before this Committee, before the Parliament as quickly as possible. I do not think necessarily there is anything served by delay—and I am not saying you are suggesting this—for the sake of it. There is quite a lot of work to do and every day that we delay this, it is becoming harder in relation to dealing with the challenges to housing supply that this will help us resolve. So I am certainly keen to get it into the Parliament on the first occasion. The budget was the occasion to do that, but we are dealing with it separately now. I am perfectly comfortable with that too.

The Hon. MARK LATHAM: Minister, I am sure you do come to this in good faith. You seem an unusually genuine and sincere person for politics—probably the most of that kind I have found in a ministry. So, I have no doubt about your intentions here being genuine, but I think you raise a really good point about the paradox. It is enabling legislation, but at the same time the Committee and probably a majority in the Upper House will be reluctant to sign off on a blank cheque. Are there transitional arrangements that can be legislated to seal off some of these financial concerns?

The first one I would raise is the financial impact on local government. They have got a fiscal overhang problem. The Centre for International Economics forecasting says that the council contributions will drop by \$117 million over the 20-year period, front-end loaded. They lose \$90 million by 2024. But the money that is coming into their coffers, additional funds from the growth rate peg alterations build up slowly over the 20-year period, getting to 6.9 per cent in 2042. So the councils are going to be worse off up-front and then there will be a tipping point where they are better off closer to the end of the 20-year period. Can we do something to guarantee overall that council income does not drop compared to a no-policy-change basis? That would, I think, solve the paradox of the enabling legislation versus the blank cheque.

Mr ROB STOKES: Yes. Certainly, I am very happy to guarantee that over the longer term no council will be worse off. In fact, they will be considerably better off. But, yes, I guess the challenge that you point to is most pointed to by the fact that, for example, moving the timing of payment contributions from construction certificate to occupation certificate sets up a lag, which I do appreciate. But there are a few bits to this policy that, we need to remember, are all working together. First there is the rates cap issue. That will help straightaway. Also for the concerns that council raise, the facts are—as Marcus alluded to—2016 and 2017 across council makes council about 2.6 billion in infrastructure contributions today. Their spending rates have not changed but there is about \$3.7 billion in developer contributions just sitting in council bank accounts. So there is money there already that they are not using. So the fear of not getting extra money, I think, is in one sense—let us worry about the money they already have and spending that before worrying about the money they do not have.

Secondly, they have got a greater capacity to borrow now as well. We would encourage them to use that when it is the growth infrastructure that itself will underpin stronger income for them into the future. The third point is this bill is not about making the State money, it is not about making councils money, it is not about making developers money. It is solely focused upon providing the infrastructure required to unlock growth. So in one sense that is my focus: making sure that that infrastructure is provided for. To the extent that impecunious councils cannot contribute to it, yes, that is a problem. But that is why this is all about identifying, as early as possible, what moneys are required. In many cases we have identified that it is not actually money; it is actually the direct dedication of land that can actually take a lot of cash out of the system. That is certainly what they are doing in Victoria and it has been much more successful. So we want to learn from that and institute that. But the idea that councils are going to be worse off—I can categorically say that that will not be the case. But there was a bit of specificity in your question. I know you are a trained economist and I am not, so I will refer you to Marcus for more details on that point.

Mr RAY: Mr Latham, clearly, the transition is something that we are very, very aware of. It certainly looms large. Obviously our general approach would be to do whatever we can to smooth out those transitional matters. We are actually moving from a very complex ad hoc system to one that is actually slightly simpler and it will be much more transparent. But those matters are at the forefront of our minds. Certainly the need to actually smooth those transitional matters out is something that we are aware of and we are working with councils to do. As I said before, not only do we have an external advisory committee that meets monthly with peak representatives, we have a council committee that meets six-weekly with senior general managers and experts in contribution planning. We are working through all those issues. We know it is very important.

The Hon. MARK LATHAM: I think you are more likely to get support if you can smooth it out and overcome the fiscal overhang issue, which is pretty severe up-front. No doubt, they are better off over 20 years. But we are dealing with short-term realities and service provision, which are critical in the growth areas in particular. My second point in the question of the paradox is about the regional infrastructure contributions

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because one of the interesting things about this Government and its rhetoric that it is the wonderful infrastructure Government through great financial management and privatisations, but in this bill the Government is trying to set up a new regional infrastructure funding source. I do not blame it for doing that, but I think we need some detail about the interaction between this new contribution fund and existing. The forward estimates are there and I suppose that on a regional scale you would be able to identify what regional infrastructure funding plans the Government already has. We do not want to see a loss of effort on that front because the new fund is coming in. Again, a guarantee to that effect would make a big difference. And more detail: How big is a region? How far towards the region's boundaries can money raised in one location be spent? All of that looks like it is fairly well unknown. Help on that front would be tremendous.

Mr ROB STOKES: Two things there. The intent is to provide the power to make a SEPP for this purpose. I point out that I can already do it under the existing legislation, but it would be opaque and it would not be an efficient way to do it. A SEPP through a proper process of consultation I believe is a far more democratic and open way to do it. Again, I am very happy to bring that back to the Committee to go through. This would enable that process to occur, rather than implementing it straightaway. I am very happy to commit to the Committee that I would not propose—I say this very emphatically—to introduce a SEPP without thorough consultation. It is in my interest to make sure everyone understands it and is at least moderately happy with the process before it continues. The second thing to point out is—you are quite right, in terms of the broader infrastructure take, the big mega projects that enable development for metros and freeways and all of those big-ticket items, of course they are funded by general government because everyone in the community benefits from them. But some of the bits that have fallen in this funding vacuum have been the less sexy bits but the bits that are absolutely critical to unlock housing development.

For example, the trunk drainage works. Crucially, because of the cost of land and the public open spaces that are required to support development—again, in some areas, down in the Macarthur region, for example, we have some critical biodiversity corridors as well, but they need to be acquired and all of that costs money and there needs to be a fund to pay for that. There is a massive gap at the moment. Effectively, rezoned land just lies moribund until we can make the case to Treasury to unlock general government revenue to pay for these things. But in one sense you think, "Why should the people of Armidale or Port Macquarie be paying for land acquisition in south-western Sydney or somewhere when those benefits accrue regionally?" There should be some sort of regional nexus rather than relying on the general taxpayer to pay for these sorts of things. Instead it is a general cost that is factored into the cost of development so that the people who benefit from development are those who contribute toward these sorts of enabling infrastructure works.

The Hon. BEN FRANKLIN: Minister and Mr Ray, thanks for being here. I have a couple of questions. The first is a follow-up to Mr Latham's question about the concerns of local councils. Obviously both in the session today and in the media they have made a number of their concerns public. I was wondering if you wanted to take the opportunity to address any of the other concerns that they had raised?

Mr ROB STOKES: Yes, I will. Thank you very much. I will refer to Mr Ray if he wants to say anything in a moment. What I would say in the first instance is that I have had the opportunity to speak to the Northern Sydney Regional Organisation of Councils [NSROC] mayors about their concerns. Effectively, their concerns relate to the fact that they represent middle-ring suburban areas of Sydney where the essential works list does not cover the sorts of things in their view that they need to provide in terms of infrastructure to support growth in their areas. Also, because they are already reasonably closely settled areas there is less capacity for an increase in population, which means the decoupling of the population cap does not assist them that much in terms of extra revenue. What I have said is that I will pass their concerns on. We have passed their concerns on to IPART to look at specifically in their review of the essential works list to make sure that it does not have an unfair impact on them.

They will benefit from the overall dramatic increase in revenue over the longer term. Their concern relates to what they perceive as a gap in funding things like park embellishments from the essential works list as currently calibrated. I have asked IPART to look at that specifically. But what I will also say is, frankly, they have not allowed us to see the modelling that they have commissioned. I understand the modelling has been undertaken by a noted town planner, a very eminent person, though nonetheless not an economist. We have not been allowed to see that modelling. In response, our modelling has been done by the Centre for International Economics and the Productivity Commission and it is there for people to interrogate. I would invite them to allow us to look at what they are saying. It is not that I do not believe their claims; it is just that I have no way of testing their claims because they will not actually let me see the modelling on which they are based. Mr Ray, did you want to say anything more?

Mr RAY: Only that we have been engaging with NSROC and its general managers. I have had a number of meetings in which general managers from NSROC have been present. We have asked a number of times for

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the modelling. Even as recently as this morning we were told that we cannot get the report and that there were some errors in the report. We are hopeful that they will give us the report, but at this stage we just have not been able to get it from them. I have agreed to meet with two of the general managers of NSROC councils next week and hopefully the report will become available.

The Hon. BEN FRANKLIN: My second question is about housing supply. Obviously the Productivity Commissioner, both in his submission and in his work more broadly, has suggested that these reforms will result in housing supply increasing. I have two questions around that. First, do you have any concerns that these changes might actually overwhelm local communities or regular planning processes and actually add too much weight to it? Secondly, we have obviously heard a reasonable amount of evidence today about housing affordability issues, particularly in terms of how we can increase stock in that space. Could you comment on increased supply and how that could potentially link?

Mr ROB STOKES: Thanks, Mr Franklin. Fundamentally, that is a big part of what this is all about. 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. As planning Minister I can go and rezone land everywhere, but without a certain method of paying for the infrastructure to turn those lots into houses they will never happen. They would just sit there. We have a legacy of that across Sydney. Across Sydney and the Greater Macarthur I think it is something like 100,000 or more rezoned lots that have not been developed because there was no thought to ensuring that there was a clear and certain way to pay for the infrastructure at the time of the rezoning. That is why this is so important.

We cannot get on top of our housing supply challenges without, at the point of rezoning, being clear with everyone, being clear with the landowners, with the developers, with the councils and with the community that this is the infrastructure that is required and this is the mechanism where, when we hand over those—because, remember, the people of New South Wales hold all development rights unless they have been given to owners. Owners who have land have certain rights with that land, but if they are seeking additional rights they are apportioned to them. But in giving them those rights, those rights trigger an obligation on everyone else in the community to pay for the infrastructure required for those rights to be realised. So it is in everybody's interest to understand that point. What is a fair contribution from that increased value that those landowners should contribute to unlock that housing supply?

Without identifying this as early as possible, we simply cannot get to the levels of supply we know we need without doing two things: either by not providing the infrastructure necessary—and as a government we are not prepared to do that, nor should we—or secondly, by asking everyone else in the community to pay money for a benefit that someone else is getting, which is just not fair.

The Hon. SHAYNE MALLARD: Thank you, Minister and Mr Ray. I have only got one area I wanted to touch on, which is the nexus of the lifting of the cap on rates that a council can collect and how that has gone to IPART and that relationship there in terms of the rate pegging, because there is a bit of confusion today. I have been reading back on the file. It is not clear to me as easily as I thought it would be. Could you outline what is happening there and that intersection with the ability of councils to pay for infrastructure?

Mr ROB STOKES: Sure. In terms of nexus in terms of the population cap, there is no direct nexus here. This is just the capacity for councils to benefit from—if there is a growth in population in their area, it just means that they can 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. There was this perverse disincentive on councils to not support growth because it just increased costs without increasing any revenue for them. It fundamentally removes that problem so that councils and local communities can benefit from growth rather than having to pay for it and not get the benefits. Mr Ray might have some more details there.

Mr RAY: Minister, IPART is working through the process. They have put out a draft report. They are actually holding hearings next week on the draft report. They are actually well advanced. Again, it is a very transparent process. The draft report, I think, was put out a couple of weeks ago. The hearings are in the middle of next week. Obviously, they will consult before they do a final report. Of course, IPART are independent of all government departments.

The Hon. SHAYNE MALLARD: You are a council in a growth area. So you make your application. Your rates increases will take into account the growth, it is 10,000 residents or something, and the pegging that is already in place with the government policy and then come back to the council. Is that what they are looking at?

Mr RAY: Yes. Ultimately, they will make a recommendation to the Minister for Local Government. That final decision is with her.

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The CHAIR: Local Government NSW's submission says that they have a concern that this bill is a rushed attempt to make permanent some temporary arrangements that were put in place in response to COVID-19. There is a couple of things there. I think, Minister, you are aware of what those are. What is the Government's response to that and justification for doing that in this bill?

Mr ROB STOKES: It is not a rushed attempt. I think, effectively, what their concern is there is in relation to the timing of payment of contributions. Councils have relied on payment of contributions, which is fair enough. Developers have, in the past, had to pay these contributions up-front, which has increased their development costs at a point when they are not actually getting any revenue, they are not generating any revenue from their development activities. In the past, councils had good reason for being worried about, "Well, if we wait till later, when an occupation certificate is granted, who knows. They might be able to get some certifier to pull a swiftie, and they'll get an occupation certificate without having to pay their contribution." But now that we have got an e-planning system, that just cannot happen. So we will catch those contributions. You cannot get a final occupation certificate without paying your contribution.

The challenge is one that Mr Latham identified, which is that does open up a gap for councils between when they expect to get the money and when they will get the money. They will still get the same amount of money. But I would say the public benefits outweigh those costs for a couple of reasons. First, we know councils already have a great deal of contributions money they have already got to get out the door before they worry about collecting the next bit. Secondly, as well, this will have a direct impact on things like housing affordability because the developer will have to go out and borrow money to pay these contributions and then they will have to hold and pay interest on that money and the holding costs associated with that throughout the development process. They will simply pass that money on to the buyer. So it drives up housing prices quite directly.

It is revenue the council is going to get anyway. It is guaranteed revenue. If they are really that worried about it, they can borrow against what they know will be certain revenue. Once we transition to a new system, the problem will go away in any event. 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. They just have not happened. But, equally, I am aware they might. So I am very happy to say that in 12 months we can review this. If there have been real concerns, I am happy to revisit it.

The Hon. ROSE JACKSON: Thanks, Minister. I appreciate my questions are standing in between me and glass of wine on Friday night, so I will try and be relatively brief. This has been relatively rushed. Even our Committee inquiry has been relatively truncated. There has been a range of complaints in relation to the short time frames. Despite that, we have been overwhelmed by submissions. There have been hundreds and hundreds come in. In light of that, are you open to making amendments to the bill? Are you intending to push forward in its current form? What is your thinking about how to proceed here? All of the evidence today, I have to say, even people who were supportive—there was a lot of qualified support. No-one seemed particularly enthusiastic with proceeding without more detail. Is that your intention, just to push forward without considering any amendments?

Mr ROB STOKES: Politics is the art of the possible. I do have a vision for reform, but I am very aware that I cannot do that without the support of the upper House. I know there is a democratic process to pathway I have to go through. Yes, I do want to move reasonably quickly because you would expect me to. I am impatient for reform, and that is what we all are. Remember that the bill itself should be about simple, clear principles that enable the detail to be worked out. So if there are issues of principle that are unclear, if there are any glaring drafting errors or something like that—of course, this is a process where we weed those out and identify them and deal with them. But if they relate to points of detail that quite appropriately should go in the delegated instruments, my commitment is—I am, effectively, asking to be empowered to go away and do that work and then bring it back to the Committee, bring it through public consultation processes, very aware that I have to take all the stakeholders on this journey with me.

When you look at it from my perspective in planning, infrastructure contributions is never going to be an issue that everyone is going to say, "Yes, we are really excited. That is a wonderful system." The only system everyone will be delighted with is a system where councils get heaps of money and developers do not have to pay anything. I cannot deliver that. So this is a system where we have all got to work together on a principles basis and go from a level of generality toward a level of specificity. To kick off that process, there is no other way for me to get there than getting the authority to go away and do the work. That is, effectively, what I am asking to do. Certainly, if there are sensible amendments that clarify issues that go toward points of principle, I am more than happy to entertain them.

The Hon. ROSE JACKSON: Good to get those commitments. In a way, like Mr Latham, I do not doubt your genuineness, although politics is also pretty unpredictable. Who knows who is going to be the planning Minister in six, 12, 18 months' time. I do not expect you to respond to that.

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Mr ROB STOKES: I would say that whoever is in my chair will have to build a consensus on this going forward, whoever they are.

The Hon. ROSE JACKSON: I am going to assume Department of Planning, Industry and Environment [DPIE] drafted the bill. Please correct me if that is not the case and it was in fact another agency. Assuming it was DPIE, I wonder then if you or Mr Ray wanted to respond to some of the suggestions of pretty clumsy drafting that we heard from the Urban Taskforce in particular. They raised the issue in relation to appeal rights on the land value contribution determination but also made broader comments in relation to clumsy drafting. Is that something that you would be willing to look at, particularly the issue of including an appeal right on the land value contribution determination?

Mr ROB STOKES: A couple of things. I have had a chance to talk to the Urban Taskforce's counsel, Mr Gadiel, in relation to these issues. We are going to take that up and look at those quite specifically and in a productive way. 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 will give you an example. In the UK they have what is known as the Community Infrastructure Levy, which basically works like the 7.12 levy works over here. It is just an amount that gets plugged in so that developers know at the beginning of a process and they can work it into their development feasibility, "This is what we have to contribute towards infrastructure." They can take it in. It provides them with certainty so they can do their numbers and then figure out, "Does this work for us or does it not?" Then that money is provided towards the infrastructure that is required. It is a really simple, elegant, easy-to-administer process.

It may not be as specific as a 7.12 levy, which identifies this preschool or this drainage culvert or whatever it happens to be, but it does collect money that is then used towards infrastructure. 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. Of course, there are always going to be developers who actually want an uncertain system because that is where they believe they can make some profits, by buying land cheap and selling it expensive without identifying where the infrastructure is. There will always be developers who actually want the uncertainty and they will not like this but, generally, Mr Gadiel is a very experienced, capable lawyer and we are working through the issues that he has raised. Mr Ray, did you want to raise anything specifically there?

Mr RAY: Not really, Minister, except to say we are actively looking through those issues and engaging with—Urban Taskforce is on our external advisory committee and we meet with them regularly. We have conversations all the time and I can assure the Committee that we work with them.

The Hon. ROSE JACKSON: You have mentioned the interest you have in unlocking supply and the infrastructure required to unlock growth. How would you respond to the statement that is contained in the budget that building approvals are running ahead of the change in the population and the suggestion of a potential oversupply in the near term? One way of reflecting on that comment, which is taken directly from the budget and the detail of this bill, is to suggest that this bill is actually about revenue raising. Despite what you have said about supply and unlocking growth, in fact it is just about raising revenue, which is why it was a budget bill and which is why, to some extent, it has been led by the Treasurer and the Treasury. How do you respond to those conflicting claims about what you said and what is stated in the budget?

Mr ROB STOKES: Firstly, in relation to supply, housing is complex—the supply of different products into different markets. We saw today, for example, there were two articles in the same paper: one was saying there was a lack of supply of one type of housing and the other was saying there was an oversupply of another type of housing. Yes, at the moment we know that inner-city units for obvious reasons are not selling all that well, but greenfield housing is growing faster than anyone imagined. I suppose the issue on supply is that there is a pipeline and that people can predict where and when it is going to come online. We do have an historical problem with providing enough housing for a growing community. Part of the reason for that is because, frankly, immigration levels are set by the Federal Government through what I believe is a rather opaque process.

At a State level, we are only guessing as to what the population growth will be to an extent, so that creates a complication for us. But also, household preferences and sizes are constantly changing over time in ways that planners cannot always predict. Supply is an ongoing challenge and we need to keep the supply of housing and of different products to meet the needs of a diverse community. I certainly do not think that there is a general oversupply; I think the evidence is quite to the contrary. In relation to the point about revenue raising, this is certainly not a revenue-raising bill. In fact, it is dealing with quite the opposite problem, which is that there is a gap in the money that is required to pay for the infrastructure we need to get the sorts of communities that we want our citizens to live in. It is the opposite challenge.

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This is where, 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. That is why, for example, in an area like Leppington you have a railway station sitting in the middle of a paddock. There is all of this rezoned land sitting around there that has not been developed and part of the reason why is because at the time there was no mechanism for identifying how the infrastructure was going to be paid for. It is those sorts of problems that this bill deals with. 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.

The CHAIR: Minister, that was very enthusiastic of you to keep us two minutes after our closing time of 5.15 p.m. on a Friday afternoon after a long week of lockdown.

Mr ROB STOKES: I am sorry.

The CHAIR: I thank you and Mr Ray for appearing and for being so open with our questions and for agreeing to be very open to our recommendations in terms of what we come up with in this inquiry. Enjoy your weekend. That is the end of our hearing.

(The witnesses withdrew.)

The Committee adjourned at 17:18.