

REPORT ON PROCEEDINGS BEFORE

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

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

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At Macquarie Room, Parliament House, Sydney on Thursday 8 June 2023

The Committee met at 9:00 am

PRESENT

Ms Sue Higginson (Chair)

The Hon. Mark Buttigieg

The Hon. Anthony D'Adam

The Hon. Scott Farlow

The Hon. Jacqui Munro

The Hon. Peter Primrose

The Hon. John Ruddick

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The CHAIR: Welcome to the first hearing of the Portfolio Committee No. 7 inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander peoples joining us today.

Today the Committee will be hearing from representatives from a range of organisations, including representatives of the environment and conservation sector, such as the Nature Conservation Council, and the local government sector, including Local Government NSW. The Committee will also hear from representatives of the community housing industry, the planning industry and the developer industry. Finally, the Committee will hear from the New South Wales Government, including the Hon. Paul Scully, MP, Minister for Planning and Public Spaces, as well as representatives of NSW Treasury and the Department of Planning and Environment.

Before we commence, I would like to 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 of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, the House has authorised the filming, broadcasting and photographing of committee proceedings by representatives of media organisations from any position in the room and by any member of the public from any position in the audience. Any person filming or photographing proceedings must take responsibility for the proper use of that material. This is detailed in the broadcasting resolution, a copy of which is available from the secretariat.

While parliamentary privilege applies to witnesses giving evidence 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 they may make to the media or to others after they complete their 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. Due to the short time frame of this inquiry, any questions taken on notice are to be returned by close of business on Tuesday, and the Committee has resolved that witnesses can provide transcript corrections, clarifications to evidence and additional information within 24 hours of the receipt of the transcript. If witnesses wish to hand up documents they should do so through the committee staff—any witnesses appearing electronically can do so by emailing the committee secretariat. With regard to the audibility of the hearing today, I remind committee members and witnesses to please speak into the microphone. Finally, would everyone please turn their mobile phones off or to silent for the duration of the hearing.

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Ms MAIRE SHEEHAN, Member, Nature Conservation Council Planning Working Group and Better Planning Network, Nature Conservation Council of New South Wales Inc, affirmed and examined

Ms JACQUELYN JOHNSON, Executive Officer, Nature Conservation Council of New South Wales Inc, affirmed and examined

Mr JEFF ANGEL, Director, Total Environment Centre, before the Committee via videoconference, affirmed and examined

Mr SAUL DEANE, Urban Sustainability Campaigner, Total Environment Centre, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our first witnesses. Would you like to start by making a short statement? I am happy for either of you to go first, whoever you would like. Thanks, Ms Johnson.

JACQUELYN JOHNSON: Thank you to the members for taking the time to hear from the Nature Conservation Council [NCC] today. We understand that this amendment bill aims to facilitate housing development and process that will replace the current developer contributions scheme and set up two funds, one for social infrastructure and the second for strategic biodiversity. The aim is to contribute to meeting the significant livable housing needs of New South Wales communities. Addressing our housing crisis is really important work. Housing with public amenities, in particular, public transport, active travel infrastructure, tree canopy green space, renewable energy infrastructure and full electrification integrated into their design and planning can be good for nature, good for the climate and good for New South Wales communities. All housing developments should incorporate these livable and sustainable elements. Any effort to streamline the process of building a community into new housing is a positive step away from the sprawling, concrete, isolated and inefficient housing developments that we have seen over recent decades.

NCC understands that the Strategic Biodiversity Contributions Fund component will be included as part of the new housing and productivity contributions scheme. The biodiversity component will specifically be used for measures to conserve or enhance the natural environment through approved conservation measures. This is positive and we commend the Government for proactively including biodiversity conservation in the planning and funding of contributions for development projects. However, it is not clear if the current offsets process can or should be used. There are really significant problems with the Biodiversity Offsets Scheme and with strategic biodiversity certification. In addition, the Act which determines these schemes is currently under review and the Government has committed to reforming it, in particular the scheme. This presents significant uncertainty about how this amendment will play out over time, in the coming months and years. Evidence shows that the Biodiversity Offsets Scheme as it has so far been largely ineffective at conserving biodiversity.

At the very least, it should be agreed that the Strategic Biodiversity Contributions Fund be revisited upon completion of the reform of the Biodiversity Conservation Act and the Biodiversity Offsets Scheme. At best, contributions made through this amendment ought to be channelled into conservation methods that actually produce a net gain for nature. It also needs to be made clear that payment into this fund does not alone satisfy offsetting obligations. Development is capable of improved conservation outcomes provided that conditions are applied and a net biodiversity gain can be demonstrated. If this bill is seeking rigour and transparency in progressing important housing reform, further consideration of the use of the offsets scheme's rules needs to be applied. There exists a risk that the bill's integrity will be undermined by giving effect to the use of a scheme that hurts the environment and causes long-term damage while striving to address a real and present crisis. Thanks.

MAIRE SHEEHAN: I'm a member of the Nature Conservation Council subcommittee on planning so I'll just mention a few of the other issues in relation to the social infrastructure, as it's called, which of course includes roads, schools, health and a whole range of other facilities for community benefit. The question there is the fund—how much will be in it, how much it can meet those actual needs—because currently the systems are separated so the Department of Education or Transport or whoever it is has to manage that through their budget.

One of the challenging things is the asset management system, which actually requires a lot of agencies now—which are called corporations—to be self-funded. Land and Housing Corporation, for instance, in terms of public housing, is a classic example. Now, I do understand—and this is just a verbal understanding—that the current Government is looking at changing that "you must be self-funded" element. I think that is well worth looking at in terms of getting a better outcome for communities because we have had decades of housing being built and no social infrastructure being put in place. This is an opportunity to make sure that happens—in consultation, of course, with the local councils.

I can see the benefits of a regional approach, because things are not that disconnected. However, the challenge will be how much of the infrastructure will actually be close enough to the developments to ensure that

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those new developments and the impacts they have can be well served by social infrastructure of varying kinds. Again, it is one of those things: Legislation comes into place and it is amazing how developers can work their way around it and play games and so on. I am sorry to be that cynical. Thank you very much.

The CHAIR: Thank you. Mr Angel, did you want to make an opening statement? Then I think we will just do questions to all, if that is okay.

JEFF ANGEL: Yes, thank you. We have a number of brief comments. We certainly share the concerns of the NCC. We endorse a basic fundamental in the bill, which is to separate the biodiversity fund away from the other regional infrastructure fund. The biodiversity developer contributions process has evolved and the latest version has been in the Cumberland Plain Conservation Plan. Certainly we don't want biodiversity money mixed up with the other important contributions funds.

The second point is that biodiversity conservation is an incredibly sensitive issue. In a perverse way, the bigger the biodiversity conservation fund in this bill, the worse the environmental outcome for the area being developed. That is because the fund is tracked with making offsets and other even more distant measures as opposed to avoiding the impact in the first place. That's why it is such a sensitive issue. It's not something that is disconnected from the spread of development and environmental impact. We are very concerned that the legislation does not lock in inadequate measures. As mentioned by the NCC, the review of the Biodiversity Conservation Act and in fact the Cumberland Plain Conservation Plan should not be prejudiced by this legislation. We want to make sure that there is nothing in the legislation that locks in the currently inadequate conservation processes.

The final point refers to clause 7.25 (b) of the bill, which brings into linking use of the biodiversity contributions fund plans, policies, programs of the Commonwealth, whatever they are. We think there is a disconnect between these unknown plans, policies and programs and not only their impact on how much money is in the fund—or withdrawn for Commonwealth purposes—but also the impact it may have on the actual nature outcomes in and around a development site. We do ask the Committee to ensure that these measures will nature-positively improve the biodiversity outcomes and that they're not some sort of vague creation of leakage from that fund for other measures.

The CHAIR: Thank you. Mr Deane, did you want to say some opening comments?

SAUL DEANE: My points would be just to reinforce what Jeff has talked about. While on the face of it we would agree with separating those two funds, I guess we have particular issues with the way the offsets have been created and have been worked out on the ground, especially from a spatial point of view; and also whether we are getting that sort of perverse outcome where everyone is starting to look at this fund getting larger and larger and thinking, "That's a great thing that we're having all of this money to apply to biodiversity outcomes," when actually it is an indicator of how much is being lost in that landscape. I just think we need to be really aware of that as part of that process.

The CHAIR: Thank you very much, all of you. My colleagues, does anybody want to start with some opening questions?

The Hon. SCOTT FARLOW: I am happy to kick off, Madam Chair. Thank you very much to everyone for your submissions and for being here today. With respect to the bill before us, there is—and I think you mentioned at the start, Ms Johnson, about the regional component, effectively, when it came to development. When it comes to the strategic biodiversity component, there is no regional linkage. In fact, there is not even a nexus to the State; that money from the fund can actually be spent out of the State. Do you have any views on that and whether that should be aligned to a regional linkage like there is for the housing and productivity contribution fund?

JACQUELYN JOHNSON: Yes, sure. That is one of the things that did come up for us in our analysis of the bill. I would also refer the Committee to the EDO's analysis, which addresses this. It's good that the bill facilitates that infrastructure spend happens in the region in which the development is occurring, but conservation outcomes are excepted from that rule. Evidence for us of an offset scheme that is working is where it prevents development from happening sometimes because a local cost to biodiversity is too great—if the impact on a local, regional or State level is serious or irreversible.

"Like for like" is a really important part of the integrity of any biodiversity offsets scheme, so any damage that occurs needs to be a net gain in the same or a very similar type of habitat or ecosystem in the local area. As I understand it, this bill is to focus on growth centres or peri-urban areas of the State. "High growth" often means high conservation value loss and declining biodiversity. It would be better if the rules in this bill made it clear that conservation spend has to happen in the same area or the same region that the development is occurring, and it has to be spent on like for like measures that will facilitate the conservation of habitat that is similar or the same

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as habitat which is being destroyed. Having said that, there need to be clear red lines around what is acceptable to be offset or for a fund to compensate for. There are parts of our biodiversity in this State that really cannot accommodate any more incursion, and that need to not be developed. So there is also that.

The Hon. SCOTT FARLOW: Mr Angel from the Total Environment Centre, do you have any comment on that?

JEFF ANGEL: This is the critical issue, particularly in peri-urban areas for which it is very expensive to find offsets. That is a reflection of the fact that there is so little left, and the current system, from which the biodiversity contributions fund is derived, is in fact a reflection of the path towards extinction. I don't think that any bill, whether it is the Biodiversity Conservation Act or this bill, should be facilitating extinction or even making a species critically endangered. So I think the bill should have some qualifications that prevent the drift to extinction, even if some other observers may describe this legislation as simply a mechanical process in how to handle funds.

The Hon. SCOTT FARLOW: Mr Angel, you also pointed out concerns that you had in the definitions in new section 7.25 (b) (i) which is the Commonwealth Government's assessment of the Environment Protection and Biodiversity Conservation Act of the Commonwealth, section 146A. Can you give us any ideas as to what sorts of measures would be contained under that Act, if you've got any knowledge of that or if the Nature Conservation Council has either?

JEFF ANGEL: That Act is being reviewed at the same time, but I do think the terms, plans, policies and programs are incredibly vague and open to later interpretation where the Commonwealth might say, "We had a planned policy or program connected or disconnected to the region being impacted by the development, and we would like funding for that." And it might, in fact, place that into a State-Federal biocertification decision. I have no idea why this particular clause is there, and we've yet to have it explained by the department.

The Hon. SCOTT FARLOW: Maybe we can get that answer for you this afternoon, hopefully. From the Nature Conservation Council, do you have any insights on that point?

JACQUELYN JOHNSON: I would just reiterate what Jeff said. It's a real moving feast at the moment with laws under review, and that's an important consideration.

The Hon. SCOTT FARLOW: At the moment we've got further details from the department about the housing and productivity fund and how that will operate. We don't necessarily have the same understanding from supporting information about the strategic biodiversity component. For instance, this is only going to be imposed on certain developments, and I think you have talked about the Cumberland conservation plan at the moment. But do you have any ideas about what would be biodiversity certified land and what sorts of developments that would apply to? Do you have any understanding of that that you could share with the Committee?

JACQUELYN JOHNSON: I will punt to Maire Sheehan if she has anything.

MAIRE SHEEHAN: Biodiversity—it is an interesting question how the definitions are made. Some of them are actually quite outdated, given the situation we are in, which is quite a crisis, in fact, in terms of biodiversity and where planning is encroaching. I agree—I think that what the criteria are certainly needs to be looked at, because there's a lot of vagueness around some of that as well. People who want to develop—and I would include certain government corporations there because the job they are given is to be self-funded and make money, so there's a development element there as well. That is a critical issue in terms of what those definitions are. They need to be clear, and there needs to be serious risk management in terms of how much we have lost, because is it not like we have heaps and we are saying we will nibble off a few bits at the edge. We are actually in quite a critical situation.

The Hon. SCOTT FARLOW: Does the Total Environment Centre have any comments on that?

JEFF ANGEL: Yes, Saul does because he has been very involved in the koala battle on the western edge of Sydney. I should note that State and Federal governments are showing a preference for biocertification of large regions in which a whole range of developments occur—in the case of peri-urban areas, fragmenting wildlife habitat and fragmenting koala corridors. It is extremely difficult to obtain a like for like, or in fact a net positive outcome in those circumstances. So the fund, and the processes and allowed measures under that legislation, start pushing towards getting some sort of disconnected conservation outcomes outside the region. Sydney is expanding or trying to expand. We're trying to push back and say, "Keep the habitat", including if it is a koala green belt on the edge of Sydney. And it doesn't matter how much money you can raise from a developer; we just don't want that habitat to disappear. Saul may have some views too.

SAUL DEANE: In terms of the biocertification process, the way we are seeing it play out in the Macarthur area is that the area that's zoned biocertified essentially has a land clearing certificate for that. It's given

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an urban capable title, which is acting almost like a zoning and therefore allowing that area to be rezoned and then have a DA go on top of it. So large areas in the Macarthur area have this urban capable title put over the land. That's creating its own problems as Jeff was talking about in terms of breaking up corridors. They are not necessarily being attached or there is not the full implementation of previous understandings of the way biohabitats in that area need to be connected or of the corridors that are required.

Can I also go to the point that was being talked about before? What we've found when we've been looking at biobanking and offsetting in this area, especially in the Macarthur area of south-west Sydney, is that you need five categories to be met in order to know that the offsets are having an effect. One of them is to be up-front so that they come in early before the development happens. The second is that they are proximate—that they're actually near wherever the land is being removed, which is obviously really important for that like for like component. The third is that they are contiguous—that they connect to other existing habitats and corridors and so on. The fourth is that they're actually an additional savings measure. There is that whole thing about double dipping—that you don't just keep on using the same bushland again and again as an offsetting measure, which we have actually seen happen in the Macarthur area. The fifth is that they have the proper environmental zoning.

The fund in particular, in a larger setting, starts to undermine the first one about it being up-front, because if it's up-front, we're not biobanking or offsetting immediately and early in setting up a corridor or a habitat. We're essentially putting money into something else that is a delay mechanism for that offset or that biobank, which then may or may not occur at whatever time in the future, and which may be too late in terms of whatever that particular ecosystem, flora or fauna is dealing with at the time. So in terms of the bigger picture, it's really important how much it undermines the up-front process of making sure that these biobanks, offsets and corridors are working.

MAIRE SHEEHAN: I just wanted to add to that. I totally agree with what you've raised there. To add to that, there's another challenge coming up with all the zombie DAs that are currently emerging, and how those get dealt with. I know it's outside of the brief of the particular changes you're recommending, but those zombie developments are happening all across the State—mainly around the Sydney and outskirts areas. They are going to be a significant challenge in terms of biodiversity because a lot of those are 20 or 30 years old and they've got nothing in them that support that.

The Hon. SCOTT FARLOW: Do you have any insights into what the charge will be under the strategic biodiversity component and any insights into what the total fund will be accumulating? We know the housing and productivity contribution fund is anticipated to yield \$700 million per annum. Do you have any ideas when it comes to the strategic biodiversity component at all?

JEFF ANGEL: We don't. There are some estimates in the Cumberland Plain Conservation Plan; the Department of Planning and Environment and Treasury worked through that. From memory, it is several hundred million dollars. But, for future developments, no, we don't know what quantum of money is involved.

MAIRE SHEEHAN: And of course all those are estimates. It's all about what exactly will be negotiated—and that offsets thing is a real challenge—and how much money and where it will be invested. So estimates can be a bit unreliable.

The Hon. MARK BUTTIGIEG: Would it be fair to say that, as a general principle, with the separation of those two funds, the implication is that you would hypothecate a dedicated quantum of money to biodiversity and that in itself—the concept and the philosophy—is an improvement?

JEFF ANGEL: Yes.

MAIRE SHEEHAN: Definitely.

The Hon. PETER PRIMROSE: Could I ask a more general question? You have already indicated a couple of amendments that you would like to see in the bill. If you were developing drafting instructions for the parliamentary draftsman on this, can I zero in and ask what other specific instructions you would like to give to the draftsman as to which changes you would like to see in this particular bill? Please feel free to take it on notice. I'm trying to zero in on what particular things in the bill you would like to see changed.

MAIRE SHEEHAN: Good question.

JEFF ANGEL: We might further consult with the EDO, but the three areas of concern to us are, firstly, that it doesn't close off the door to nature-positive improvements to the underlying legislation. It gives rise to this fund—that is, the Biodiversity Conservation Act and the biodiversity certification processes that gave rise to the Cumberland Plain Conservation Plan; secondly, that the issue of like for like, or that the region inside the region that is subject to a large biocertification plan is where the vast bulk of the money is spent, because that's where the endangered species are and they shouldn't be allowed to disappear from that region; and thirdly, some sort of circumscribing of 7.25 (b), certainly in the absence of any explanation from government—whether it's

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Commonwealth or State—as to why that clause is there. If the Commonwealth wants to put conditions on biocertification then it goes in biocertification, not this sort of open-ended clause in this bill that allows lands, policies or programs to intrude on how the money is expended. But, yes, we can do a bit more work on that, if you like.

The CHAIR: This is a question to all of you, really. We know that there are serious and significant problems identified with the biocert and the offsets scheme at the moment; they've been documented and documented. I suppose this is a general proposition: Do you think the fund is an appropriate place to include further conditions around how that money is spent—recognising what you say, Mr Angel, that ultimately we would love the fund to remain empty, perhaps for the rest of its life, because then it means we haven't had a significant impact on biodiversity as we go forward?

At the moment, the way the bill is designed is that all of the funds are collected and then administered according to the biocertification order. But I think the NCC and the TEC have raised in their submissions that we don't actually have clear rules around biocert compared, say, to the offsets system and the scheme, particularly going to those provisions or criteria that you referred to, Mr Deane. You had those five criteria, but if we stick to the ones, which are additionality, like for like and in perpetuity, I suppose what I'm asking is: Is the fund a place where those rules should also apply and carry on through to—particularly given that, as you've all identified, the schemes are under significant review at the moment?

JEFF ANGEL: This is a bit of an issue that perhaps that part of the bill is premature, given that the other legislation is under review. I recognise that this bill has quite a narrow focus and potentially it is difficult to re-engineer the current biodiversity conservation legislation via this bill. But, at the same time, given that the legislation is under review, this bill puts in place a concept of biodiversity conservation funds or developer contributions which may or may not be appropriate after review of the other founding legislation.

Certainly we would ask the Committee to highlight the importance of those provisions—additionality, proximity, like for like, environment protection zoning et cetera. In the best of worlds, the original biodiversity conservation legislation and this legislation would be on the same playing field. I am not aware of how we can achieve that through amendments at the moment. We will try to get advice on that. But there is a sort of disconnection between that part of this bill on biodiversity and the legislation that gives rise to the biocertification that directs the amount of funds and where the funds will go.

JACQUELYN JOHNSON: I back up what Jeff has said. There is a fairly well established best practice for biodiversity offsetting that can be referred to, but I don't know what the complication of doing that in this amendment would be. I will mention one thing to answer your question that could be clearer, and it speaks to your question as well. "Approved conservation methods" as a term includes the retirement of biodiversity credits. That on its own locks in really poor practice offsetting—if this amendment were to be clearer about what is considered to be meeting offset obligations rather than just paying money into a fund, because that sets in stone what we know to be really poor practice. That's the other clarification I'd add to what Jeff has said.

MAIRE SHEEHAN: I think that's critically important. Again, if it's a fund and it's a contribution, the discussion about how much we're willing to pay—because it will become a financial matter then for the developer and saying, "Well, it only costs this amount, so let's go ahead." It's critically important to get that red line in place.

SAUL DEANE: If I could just add one other point, if the fund is a mechanical thing that is needed in order to hold funds while other things are happening, I can understand that. My more fundamental issue with it—and it goes to those five points that I mentioned before—is that idea about "proximate". You're essentially taking habitat that is in a very specific area that is being removed and you're turning that into money, which is fungible and has no place—it is a general sort of thing. You could imagine in south-western Sydney, your very expensive land being turned into quite a lot of money—maybe—and, therefore, that money then being spent in places that are far away where it feels like it can get to larger areas that are secured for habitat. It's actually doing nothing in terms of the protection of the specific areas that are being removed. You're creating a general fund that can be funnelled to other places where it won't be tackling the issue or problem that was identified by the original offset amount that was established.

The CHAIR: Have any of you turned your mind to or given some thought to the fact that, in the event that this goes ahead and this fund is created, the moneys can then be invested in accordance with ordinary State Government and Treasury practices, and what that means in terms of where those moneys could be invested in non-conservation funds and fund-generation tools or products whilst they wait and generate more money? Have you given any thought to that notion?

JEFF ANGEL: Sorry, you're referring to the ethical investment of these funds?

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The CHAIR: I'm asking you if you've given any thought to the fact that we could have biodiversity moneys or moneys that are collected for the destruction of the environment, facilitating extinction, then being invested in who knows what? Have you given any thought to that or had any idea of other tools or mechanisms that do the same?

JEFF ANGEL: No. But now that you've brought it up, I think the issue of ethical investment of biodiversity conservation funds is a rather important issue. I don't think it sits well with people that money supposedly being spent on protecting endangered species is invested by the Treasury corp into nature-destroying developments. It's a very good point.

JACQUELYN JOHNSON: We're in a biodiversity crisis right now, and the urgency of the discussion that we're having makes thinking about future investments probably not appropriate. It's not the timescale that we're on right now.

MAIRE SHEEHAN: Also, the way it's set up at the moment with TCorp, that's quite separate to budget. Basically, the Executive arm of Government can at any stage make all sorts of interesting decisions about how that's done. So it's really looking at how that fund gets set up in a way that there is more oversight than just the Executive arm and is basically placed on that ethical principle et cetera as it progresses.

The CHAIR: I'm just wondering, Mr Deane, the notion that moneys can be collected and held in this fund and then invested in interest-generating terms, where that sits with what you were referring to about the notion of up-front? We're moving further and further away from one of the most desirable outcomes when we're talking about biodiversity loss and biodiversity-positive gains. If we're talking about money being used as a tool further down for other things, are we in fact getting further away from this up-front that you were speaking of that is a vital integrity component to a scheme?

SAUL DEANE: Yes, we absolutely are. The further it's delayed, the less it's helping that area that was devastated or impacted by that loss. I can imagine once you get a pot of money and it's growing, there's a certain perverse incentive of, "Oh, look at this." You talked about how it's an indicator of loss. Not only is it an indicator of loss, but the longer it stays large and is not being invested back in the ground means that the impacts are getting worse, because the longer you delay it the worse the outcome will be for those species that have lost that habitat or area. Absolutely.

The CHAIR: Finally, Mr Angel, you were referring to the mechanisms under the EPBC Act. I obviously know a little bit about that legislation, but I am not certain. Do you think, from the way it's proposed right now, that that means you could literally be collecting moneys for, say, the destruction of high-quality koala habitat and then that money goes into creating a document or strategy on how to do something somewhere else related to the environment? Do you think it could be that far disconnected?

JEFF ANGEL: Yes. The offset schemes aren't just a land-for-land scheme, whether it's in the region or hundreds of kilometres away. They are for a bit of extra research, developing a strategy and education work. The whole offset regime at State and Federal level has become weaker and more distant from the point of impact where an endangered species is under attack.

SAUL DEANE: I think that's a really good point. In many respects this is about habitat. It's about an area that's being removed. If that fund is then not being used for exactly the same sort of thing but is funding research and all these other activities and not actually replacing habitat in an immediate sense, then that's a real concern.

The CHAIR: Are there any more questions from anyone? Do you have any other concluding comments? Thank you so much for your attendance. Mr Angel, you were going to perhaps get back to us with some further comments around specific amendment drafts or that idea, if we can get those returned from you by close of business on Tuesday. The secretariat will be in contact with you.

MAIRE SHEEHAN: I was just going to say that my understanding is, from talking to a variety of groups and some councils, that there will actually be some late submissions being put in by some organisations and councils and so on.

The CHAIR: We think there are a few more.

MAIRE SHEEHAN: Thank you. I will be in contact with them anyway, so I'll get them.

The CHAIR: That concludes our first session. Thank you for attending, and for your time and input.

(The witnesses withdrew.)

(Short adjournment)

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Mr SCOTT PHILLIPS, Chief Executive, Local Government NSW, affirmed and examined

Mr STEVEN HEAD, Chair of NSROC General Managers Advisory Committee and General Manager Hornsby Shire Council, Northern Sydney Regional Organisation of Councils, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to start by making a short opening statement?

SCOTT PHILLIPS: I thank the Committee for giving me an opportunity to appear at this hearing today. I'm Scott Phillips, and I appear in my capacity as Chief Executive of Local Government NSW, the peak body for New South Wales general and special purpose councils. Local Government NSW has advocated for a review of the infrastructure contribution system for some years. Councils support ongoing efforts to reduce complexity, cut red tape, and improve transparency and equity. In the context of the significant financial sustainability concerns facing New South Wales councils, infrastructure contributions are a critical source of funding to help deliver the local infrastructure needed to support housing and economic growth.

LGNSW welcomes the Government's commitment that this bill does not propose to make changes to local infrastructure contributions collected by councils. We recognise that the Government has listened to previous feedback from the local government sector. Local Government NSW does not oppose the bill introducing a more consistent framework for broad-based infrastructure contributions for State infrastructure. This support is subject to councils being able to continue to levy their own developer contributions to provide local infrastructure. The consultation process for defining any new region or regions for this levy is unclear, and we seek assurances that councils will be consulted. Clarification of transitional arrangements for the continuation of special infrastructure contributions, known as SICs, is also necessary. The proposal for \$1 billion in grant funding over 10 years is welcomed, although we would like to understand more about how these grant allocations will work in practice.

In conclusion, we ask the Committee to satisfy itself that there be appropriate safeguards in place to ensure councils are consulted on changes to the definition of regions, recommend that the transitional arrangements for SICs include a guarantee that infrastructure identified in an existing SIC plan will be funded under the new housing and productivity scheme, and ensure that there be no changes to the settings for the levying and collection of local infrastructure contributions by councils. Thank you, and I look forward to assisting the Committee this morning.

STEVEN HEAD: I'd also just like to acknowledge the traditional custodians of the land and say thank you very much for the opportunity to be here today. I'm representing the Northern Sydney Regional Organisation of Councils and Hornsby Shire Council specifically. First up, I'd just like to acknowledge the work that's been done on this piece of legislation. We believe that some of the changes that have been made since it was first introduced to the Parliament in 2021 have been very positive, and we welcome those changes. Broadly, we're very supportive of the submission that was made by LGNSW, which I believe the Committee already has and which I've read this morning. We believe it is totally in order.

I've got four points that I'd like to make broadly. The first one is regarding the allocation of funds. Whilst we acknowledge the changes that have been made to identify that funds will be spent within the region, we think the regions are—and particularly in the case of Sydney, or the metropolitan area of Sydney, obviously we're looking at quite a broad area there. It's the contention of the northern Sydney region of councils that we should be looking at an allocation of funding within the district within which it is collected, which is still a considerable area. Of course, the northern Sydney region of councils is servicing in itself some 700,000-odd people, so we think it's a considerable area.

The second area is in regard to council input into infrastructure prioritisation and governance arrangements that we'll set in place. We do acknowledge the much stronger governance arrangements that have been made for the allocation of funds and we generally support those. We'd like to just add that, in the interests of transparency, and given the quite detailed process that local government needs to go through in developing its own contributions mechanisms, the process shouldn't be undermined simply at the discretion of the Minister, which we do note is within this legislation.

A concern we would raise is that the bill appears to allow for quite a wide scope of allocation. What we'd like to see is that councils have a genuine seat at the table in the governance arrangements. We note and are very supportive of the fact that LGNSW will be formally represented on one of the oversight committees. In the governance mechanisms—and the department has kindly provided some insight into their thinking around how that may work out—there is an opportunity for councils to be included. We'd like to specifically see that councils are genuinely included within the governance arrangements and have a real say and input into where infrastructure priorities can be aligned to the delivery of housing.

CORRECTED

A third point that I'd just like to make is around the timing for funding allocation. The process of the allocation of the contribution requires, we believe, coordination with the planning proposal or the rezoning process to ensure that councils, relevant agencies, developers and the community have confidence that the required infrastructure will be funded and delivered in conjunction with development. We think that goes a lot to the social licence that we actually have with communities. We can work very closely at the local government level with the community to ensure that there can be confidence that infrastructure will be delivered in response to increased density, particularly within the infill suburbs, which is obviously the northern Sydney region of councils. We think the criteria for the payment of funds should include where infrastructure is required to support the progression of a planning proposal.

I might just give you a very quick example of the Hornsby town centre. We're looking at the delivery of some 4½ thousand dwellings over the next decade to two decades in that area. The infrastructure contributions at the local level will certainly help support the infrastructure that we need to support those new communities, but we will be unable in ourselves, through our local contributions mechanism, to deliver all we need. We will need to have coordination with the State agencies and additional contributions will be needed to address some of the traffic and transport type of infrastructure that we need there. That's just one example across Sydney.

The fourth point that I'd like to make—and I've just made a note of some of the other submissions which have been made to the Committee—is to ensure that there is no risk to local contributions through this process, and probably most importantly, that there is no change to the point at which local contributions are collected. I believe that any deferral of that from the construction certificate stage through to the occupation certificate stage will seriously hamper council and, for that matter, the State Government's capability to be able to deliver infrastructure at the time that it's most needed. I'd also cite the example that a number of councils, who I understand have had significant issues where contributions have been collected or theoretically are to be collected at the occupation certificate stage, have in fact found themselves not able to collect all the funds that they were due. I believe that applies to Ryde and to some extent Hornsby, and we can provide further detail if needed. Thank you for the opportunity to speak, and I'm more than happy to answer any questions.

The CHAIR: Thank you. I noticed—it was maybe in one of the submissions—that the timing of contributions under the COVID arrangement meant that in one council situation they're facing serious difficulties collecting that because of that timing. There seems to be unified view, after that experience, that timing is actually of the essence and that that occupation certificate stage is too late. Can I just ask are you suggesting in both your submissions that the idea of the ministerial discretion and local government and councils being—I think I read at one point having active participation, not merely the opportunity for input. Do you think that is something that should be embedded in the legislation?

SCOTT PHILLIPS: We would welcome that in the legislation. LGNSW, with the previous Government, had an intergovernmental agreement to be actively consulted on matters affecting the sector, and we have put a draft agreement before the new Government seeking that same agreement to be executed. We feel that it would provide certainty for the sector if it was embedded in the legislation. However, if the Committee was satisfied that it could be done through other mechanisms, we would simply ask that local government have that active consultation process embedded.

The Hon. SCOTT FARLOW: Apologies, we only just received the Local Government NSW submission so I haven't had the opportunity to go through it chapter and verse, but we did receive yesterday a number of council submissions. I would say that as a theme emerges, the concern that most councils have is in terms of the hypothecation of the funds within the region and Greater Sydney being one region. I know that you certainly did talk on that from a NSROC perspective. Is there an overall perspective from local government that you could outline as to how that should be hypothecated? I know there is variance in those submissions—some say by LGA and some say across the three cities effectively within Sydney: the eastern city—the harbour city, so to speak—the central city and the Western Parkland City, as a good starting point. Do you have any perspective you would like to share with the Committee on that point?

SCOTT PHILLIPS: It's certainly the case that each council is concerned to ensure that infrastructure keeps up with the required development within that local government area. I can say that, both having been a practitioner in local government and now in my current role, one of the challenges that councils face in consultation with communities about any increase in growth is assuring those communities that infrastructure—being local and State infrastructure—will be provided at the time of the growth so that the impacts of additional development are offset by the infrastructure being provided. It is a very understandable concern of all councils to ensure that, if State infrastructure contributions are collected within an area as an outcome of that new growth, there be the appropriate provision of that infrastructure within that area. I am not surprised and it's consistent with the representations we're receiving about ensuring that occurs.

CORRECTED

The Hon. SCOTT FARLOW: And, Mr Head, from a NSROC perspective? You've outlined the district, I think. Do you see that as being the NSROC district or the northern district, as was outlined in the Greater Cities Commission plan?

STEVEN HEAD: It's the northern district as it's seen. I think in the end we've got a strategic planning framework that operates across the city. It seems to me each of those district plans contains a lot of the infrastructure that are necessities. So it would seem, I think, quite reasonable then that the funds that are collected within those districts can be reallocated towards the prioritised delivery of infrastructure that supports housing delivery within those districts.

The Hon. SCOTT FARLOW: Mr Head, you were raising one of the issues in terms of the funding and the nexus, so to speak, around where infrastructure is needed when it comes to a development site. One of the criticisms I have seen from council is that there's no nexus requirement under this legislation—when it comes to your 7.11 and 7.12 contributions there is a nexus component. That doesn't exist when it comes to the new housing and productivity contribution fund. Would you like to outline how you see that potentially undermining the community's confidence in taking more development in areas like the Hornsby town centre?

STEVEN HEAD: That's an excellent question. As you outlined, nexus is a specific component of council or local government's 7.11 and 7.12 plans. You can understand from the broader perspective that we are seeking to gain funds for infrastructure which can then be distributed in a prioritised form. That's where I come back to the governance arrangements and that if you have sufficiently engaged with local government in the distribution of funds and a priority means to where we're going to see the housing delivery—in other words, from prioritising the allocation of what is still going to be scarce resources to where it's going to give us the most benefit.

I think if we're doing that across a district level we start to establish a closer degree of nexus than if it's simply, for instance, we're collecting let's say on the northern beaches of Sydney and then we're allocating funds. Those funds are effectively being allocated to somewhere far, far away. If you're within the district areas I think you've got a better opportunity. We've made the suggestion to the department that formally utilising the various ROCs that operate and cover virtually every Sydney council would be good mechanisms of achieving and helping to understand and communicate back where the nexus then is between the collection of this contribution and its allocation.

The Hon. SCOTT FARLOW: One other question has just been received from Willoughby City Council's submission that I take falls under the NSROC banner. They have raised this concern that the HPC:

3. **Will result in reduced local contributions from developers** in terms of development feasibility having to account for payment of both local and state contributions, diminishing the effective delivery of housing in the area to meet housing targets.

I guess in your area of NSROC there are no SICs that currently exist, so this would be an additional impost that wasn't there previously. Do you have views on that hypothesis from Willoughby City Council?

STEVEN HEAD: We may have a SIC that may apply to part of St Leonards possibly.

The Hon. SCOTT FARLOW: Sorry, I mean more from the Hornsby perspective rather than the NSROC perspective.

STEVEN HEAD: Certainly there are no current SICs that apply in the Hornsby area. I think the comments from Willoughby, and it's something that we've discussed across our district area, is that our concern is feasibility—particularly given the circumstances of rises in construction costs and all of the challenges we are well aware of potentially hurting feasibility. Ultimately, additional taxes that are being collected may impact on the overall feasibility of a development proposal. In Willoughby's context, I know that they have been strongly supportive of implementing affordable housing as a key.

When they then look at the overall context of the contributions by developers via various taxes, it impacts on the capacity for the overall allocation, if you like, of something towards the public or community benefit. I understand that is Willoughby's concern in that sense. I think it is a reasonable one, in that we're all concerned about development feasibility and ensuring we can get housing supply. I think that was a specific issue for Willoughby within that context but I think that's really about where should the allocation of resources best be made, and how might they best be made, to support community need.

The Hon. SCOTT FARLOW: To that point, the City of Sydney in their submission called for that feasibility modelling to be provided, to show that it could be feasible. Is that a call that both your organisations would support?

SCOTT PHILLIPS: We would welcome that, yes.

CORRECTED

STEVEN HEAD: Likewise. I think that transparency is a good thing for all of us in that sense, so yes.

The Hon. JACQUI MUNRO: I had a question around recommendation 3 from the submission. Perhaps Mr Phillips is best placed to answer this. I'm wondering if there is an understanding of the value of infrastructure that's been identified through the existing SIC plans that would need to be funded under a new plan?

SCOTT PHILLIPS: I'm unaware of the monetary value of each of the SICs. What I would say though is that any change to the setting for the collection of SIC funding within those areas would be a betrayal to those local communities. Communities will have accepted growth and development based on the understanding that sufficient funding is being collected for State-based infrastructure within that area to offset the impact of that. So whilst the monetary contribution will vary from SIC area to SIC area, and the infrastructure itself will vary, we say it's most important that those local communities continue to have the assurance that they will receive the infrastructure that matches the growth that's been provided.

The Hon. JACQUI MUNRO: You also refer to the \$1 billion grant fund that was included in Minister Scully's speech. I am just wondering if you had any information about that in terms of the kinds of developments or infrastructure projects that would be funded through that \$1 billion?

SCOTT PHILLIPS: We welcome that development in the new bill, and it certainly had not formed a component of any former proposed legislation. We are unaware of the detail of that other than we understand that that funding will assist councils to provide infrastructure earlier than may otherwise have been the case if the council's local contributions haven't been topped up enough to provide for the infrastructure. As I am sure you will receive evidence from the development sector, the timing of infrastructure and the timing of the funding to fund that infrastructure is critical, and we understand that \$1 billion will provide for that top-up so that communities will receive the necessary infrastructure when they are moving in or as that infrastructure offsets impacts for existing residents.

The Hon. JACQUI MUNRO: So there's not really an understanding yet of how that would be distributed regionally across the State, in districts perhaps?

SCOTT PHILLIPS: Not yet. No.

STEVEN HEAD: That's our understanding as well, and I suppose that is to our point around engagement within the governance arrangements. So it will be good to understand what those governance arrangements are going to be and see that the local government is formally included within them.

The Hon. JACQUI MUNRO: Just finally, I wanted to ask about infill. Obviously, urban councils are much more likely to be developing in areas that already have a lot of development. Do you perceive that this protects councils' ability to develop within existing areas effectively and that density can be increased in those more urban areas?

SCOTT PHILLIPS: We welcome this legislation primarily on the basis that it does not in any way change the settings for the local collection of infrastructure contributions—either what councils can levy for, when they can levy them and the value of those contributions. So, to your question about does it allow or not facilitate growth, it doesn't change it, and that is important for us to have that assurance.

The CHAIR: There was some question around—I think I read—the uncertainty about the transition provisions around the existing SICs. What is your best case in terms of those transition arrangements and what that would look like?

SCOTT PHILLIPS: There is uncertainty. But I say that in the context that that is in some ways detailed stuff, and I would understand that the government agencies haven't been able to provide that level of detail yet. We would say that grandfathering the SIC within the boundaries of that SIC contribution area would be satisfactory. What you will see at the moment in any SIC plan is that there will be a very clear boundary, there will be a very clear list of infrastructure, and we would say that, for the purposes of any growth and development and infrastructure within what was a SIC—be grandfathered for the purposes of that growth.

The CHAIR: Do you think are there any circumstances where the new system could actually bolster existing arrangements within some of those already collected or allocated contribution projects?

SCOTT PHILLIPS: We certainly welcome the announcement for the \$1 billion that will assist councils. As we mentioned, we don't have detail of that, but that is certainly a welcome development for us.

The CHAIR: Is the OPS or the IPS or the infrastructure opportunity plan—is that what you see as the place where the real partnership has to happen between councils and the State Government? Is that where it happens?

CORRECTED

STEVEN HEAD: Yes. I think the opportunity to ensure that the relevant State agencies are working with local government—we'd get an understanding of all of the infrastructure needs and, thereby, opportunities that have been identified and be able to align that then with overall priorities around where we can get the housing in and where we can best support that with infrastructure. So, yes, it is a very good starting point for the conversation—if you like—between local government and the relevant agencies which will help us to establish really effective prioritisation processes. I come to my earlier point around doing this at earlier planning stages—at the planning proposal stages—so that we can be focused on delivering infrastructure at the time that it becomes relevant and needed by communities. That lag between infrastructure delivery, which often comes well after the development has gone in, I think is one of the areas where we potentially lose trust from communities.

The CHAIR: Is there a concern, or have you heard the concern, about some of the exemptions around seniors housing and the way that is currently anticipated in terms of being exempt, and have you got clarity around what that actually means in terms of the senior housing exemptions? Obviously we will question the Government, but I assume we are referring to the Housing SEPP and the provisions for that form of housing under the SEPP. Has there been any concern raised with you by your councils?

STEVEN HEAD: I don't have a formal position from my councils. What I would say in general terms is that seniors housing, which is most certainly a housing type and part of the whole mix of housing diversity—it is really important that we be providing that in appropriate locations, so where it's needed. But still from it does arise a need for services and facilities to be provided for those communities. They may be different needs that are there compared to other segments of our community, but we still have those needs. Often the need to provide for improved access and for access to better community facilities—they are just two of the areas that we need to do in response to the provision of seniors housing within our communities. Whilst I think this also comes back to the point of understanding some of the feasibilities and that, if it is still viable, then the contributions from these groups or from these developments is still, I would think, a necessary part of providing overall infrastructure that we need to support our communities.

SCOTT PHILLIPS: If I may add to that and, firstly, in full agreement with my friend—I think all councils would agree that there is an opportunity for further reform to infrastructure contributions. We don't say this bill deals with all the issues that councils face. We simply say we do not oppose this bill because it does not impact upon local contributions. Your question in respect of seniors housing or what may or may not be levied is certainly a conversation we would welcome with government, and we would welcome ongoing negotiations for broader reforms. We wouldn't, though, want those conversations to get in the way of what we say is a fair deal for councils in respect of this bill.

The Hon. MARK BUTTIGIEG: The general level of support, based on the fact it doesn't have any negative impact on local councils but, based on your previous comment and what we have seen here—that, in fact, there is an extra \$1 billion going to councils. That is not an insignificant thing, so I imagine some of the support stems from that initiative. Would that be fair to say?

STEVEN HEAD: Yes.

The Hon. MARK BUTTIGIEG: Other than that, in terms of the structural reform of replacing the SIC with this other contribution which is more, could you just outline any value-add from your perspective from that change, or is it mainly just because of the extra \$1 billion and the fact it doesn't negatively impact local councils?

SCOTT PHILLIPS: Without wanting to complicate this in any way, I think that's actually correct. The councils do welcome the opportunity to participate in receiving funding for infrastructure that can be put on the ground to support communities earlier than would otherwise be the case. I would ask the Committee to look at this bill through the lens of what has been two years of quite detailed, protracted and sometimes contentious negotiations with the local government sector. Through that lens we say what is before us today is a welcome development, and we support it in that context.

STEVEN HEAD: I certainly support the comments by Mr Phillips in that sense.

The Hon. ANTHONY D'ADAM: Can you give us an indication of how much time there is between construction under the current arrangements and if the payment was delayed until the issuing of the occupation certificate, on average? What's the timetable we are talking about?

SCOTT PHILLIPS: Could I just clarify the question in the context of the collection of local infrastructure contributions against the collection of contributions for the State? I want to make this point clear. Local government understands that this bill makes no change to the collection of local contributions, either in the timing, the value or what contributions are collected for. We support the bill on that basis.

CORRECTED

The Hon. ANTHONY D'ADAM: It's a moral hazard argument, isn't it? If we entertain a change in terms of the timing of the payments under the proposed scheme then obviously the argument could logically flow, and that's what you're worried about, isn't it?

SCOTT PHILLIPS: If the contributions to be collected under this bill—i.e. State contributions—are to be collected at an occupation certificate stage, as opposed to a construction certificate stage, we say that's a matter for the State. That's simply that the State is collecting their contributions later. We just want to ensure that the bill is not amended in any way that changes the timing for the collection of local contributions. To your question about how long that occurs, I would say it is months to years. In some cases it's months. Receiving your construction certificate—"Here you go; you can start constructing now"—it is usually six to nine months before the turning of the key and the family can move in. In some cases though, particularly in larger developments, that could be a number of years so the cash flow implications to councils can be catastrophic in circumstances where councils were faced with the possibility of not being able to collect those contributions until the occupation certificate stage.

The Hon. MARK BUTTIGIEG: Your point is that the bill doesn't affect that because it is not affecting the local collection. But in terms of the State collection, presumably one point of utility is cash flow for potential developers to be able to finance their projects, therefore encouraging more supply.

SCOTT PHILLIPS: Yes, absolutely. We don't want to stand in the way of that. That is a matter between the development sector and the State. If the arrangement between the development sector and the State is the delayed collection of contributions, frankly that's not councils' business. We very much focus on ensuring that there are no changes to the settings at a local level.

The CHAIR: Would it not then interfere with or jeopardise the notion of social licence that you were referring to? If you've got the State agreeing to wait and delay to collect then that slows down the infrastructure progress and commencement. You've then got the community that you've built the social licence with to engage in the growth not receiving the benefits in a timely fashion. Potentially it would harm the very thing that you're suggesting is fundamental to successful growth—namely, social licence.

STEVEN HEAD: Absolutely. I think that is the one risk that I see, and I agree entirely with Scott's comments in terms of it being a matter for the State. But I think the delay in the cash flow in essence—most of the funding will be assumed is going to come from larger scale subdivisions or larger scale developments and that's where the infrastructure is required to get in at the point. It's not so important at a simple mum-and-dad type dual occupancy with an odd bit of work that is happening—I don't think that's going to be the crux. It's really going to be about where we've got significant infill development happening and we need to ensure some of the transport and those other upgrades at that point of time. That is the risk for us. If the State doesn't have the cash flow either then we really do start to see a lag.

The Hon. MARK BUTTIGIEG: That's the key point, isn't it? It's the State making objective judgements on the balance between encouraging infill development and then being able to finance the gap in the infrastructure.

STEVEN HEAD: That's exactly right. As I said, I absolutely agree with Scott's point that it is a matter for the State. The concern will be that when resources are all constrained—State government, local government and private sector—it is just at the point where we want to see this infrastructure being developed. As a practitioner in this field over a long period of time, the support we get from our communities is contingent upon us being able to deliver the things we say will come. And in particular in relation to development, it is the infrastructure that supports it.

The Hon. ANTHONY D'ADAM: Under the COVID arrangements was interest payable?

STEVEN HEAD: No.

The Hon. ANTHONY D'ADAM: Effectively they got a discount, as well as the delay, which had benefits for cash flow obviously.

STEVEN HEAD: Yes. They were certainly extreme times, but I understand there are examples of councils which have struggled with that concept. Particularly where we've seen some builders and developers through stressful situations or maybe their developments were marginal—some councils report that they've had a loss of income and the lack of certainty that comes with that, I think, has been challenging. But it has been very challenging times for all.

The Hon. ANTHONY D'ADAM: You alluded to collection difficulties. Was that because the developers had hit financial difficulties? What were the drivers of difficulties in terms of collection?

CORRECTED

STEVEN HEAD: Once you get beyond the issuing of the construction certificate you're often in the hands then of the private certifier. You are then reliant upon others to ensure the collection of funds prior to the issue. In some cases, I understand there has been the issue of interim occupation certificates which haven't required all of the conditions of consent to be followed and as such what you see is people have moved in and inhabiting new developments but the contributions haven't been paid. In some cases the developers were at the point where they said, "We've got interim, we've got our funds and we've received the sale price", and they've moved off onto next adventures. There's been difficult conversations with the new inhabitants of buildings at the point where they're then trying to achieve the final occupation certificate. That's my understanding that that's happened for some.

The Hon. SCOTT FARLOW: This was a recommendation of the Productivity Commissioner as part of his original report. One of the things that he recommended on this front was that the Planning Portal be amended to ensure that there was some payment before the issuance of an occupation certificate. Is that something you believe could be done? I am not suggesting that you would support that necessarily but, in a technical sense, is that something that would be possible to do?

SCOTT PHILLIPS: Is it technically possible? I don't know enough about the mechanics or the workings of the Planning Portal to answer that. I would assume so. But—and I want to be clear—there would be significant objection from the local government sector if such an arrangement was turned on. It is the councils' very strong view that the collection of local contributions must occur no later than construction certificate phase.

The Hon. JACQUI MUNRO: Sutherland Shire Council raised the risk to housing affordability through the implementation of this contribution scheme. What are your views? Do you think that there is a risk to housing affordability with this charge that obviously doesn't affect what councils can levy—it is an additional charge. Is there some risk there?

SCOTT PHILLIPS: We have such a short time to comment on what is such an enormous complex question around housing affordability. I would find it difficult to answer that question without having spoken about the context of housing affordability in the development process and what we say. We have put submissions to governments for many years about levers that we believe both State and Federal governments could pull to improve housing affordability for local communities. I'm sorry I'm being vague, it's just such a difficult and complex issue.

The Hon. JACQUI MUNRO: Mr Head, did you have any comment?

STEVEN HEAD: Yes. I think that the City of Sydney has called for some transparency around the feasibility, and the understanding will help us all to understand that a little bit more. I think we all should be concerned about costs of development in an era of such a struggle of housing affordability and ensuring supply. Like Mr Phillips said, it's a very complex discussion. I think we'd like to book in another week or two with you, if we could, to examine that one.

The Hon. JACQUI MUNRO: It sounds good to me.

The CHAIR: Yes. We tried for it. On the whole then, in that sense, in the submissions we have received there are a couple of councils that are saying, "We are not really supportive of going in this direction", but the bulk seem to be saying, "We are supportive. We're in a housing crisis, we're in a housing affordability crisis, we're in an infrastructure backlog", et cetera, "we've got to do something. This is a good step forward." The general view is let's take some steps, have a bit more transparency, make sure we're firmly at the table early and let's walk down this together. What I'm reading is that seems to be the overriding outcome from this short process. Would that be a fair reflection?

STEVEN HEAD: I think Mr Phillips' earlier comments about you've got to look at this in the context of the legislation that was initially identified back in 2021 and that, in the context of that, what we see before us is a marked improvement that both helps to provide infrastructure but also doesn't hurt what is an absolutely critical—and I can't underline that statement enough—funding source for local government to be able to provide infrastructure to communities. In that context, we absolutely welcome the piece of legislation that's before us and we would like to see some of those points that we have both raised in our submissions being addressed as the legislation is finalised and then, obviously, as the detail is provided behind the legislation.

The CHAIR: We've run out of time. As a last point, there was very scant mention in the councils' submissions around the biodiversity fund component. Is there any particular reason that there hasn't been a focus on that from your particular sector?

STEVEN HEAD: We simply haven't had time to really look at that. But I can understand the need to probably look broader in some cases for the application of the biodiversity offsets. I really don't feel I can speak

CORRECTED

from a NSROC perspective here, but from a Hornsby perspective wherever we seek for the application of biodiversity offsets we look for them to be very much within the local area because we believe you should do it as close to the source of the biodiversity loss as you possibly can. That's a policy position as a council we've had for a long time. But that's not always possible to achieve and so I can see a reasonable argument to be able to extend the application of funds beyond the region in that sense.

SCOTT PHILLIPS: And, in perhaps 25 words or less, LGNSW has made a draft submission to the statutory review of the Biodiversity Conservation Act and we would refer the Committee to that submission to provide a more full position on the sector's views on those settings.

The CHAIR: Thank you. I think there is broad agreement that the timing is not fabulous when it comes to the biodiversity component because of those comprehensive reviews that are happening. Thank you very much for your time and evidence today. I don't think there were any questions taken on notice, so you have no homework and we have no collection. However, you can provide any clarifications to your evidence within 24 hours of receiving the transcript. Thank you both for your time. We're very grateful.

SCOTT PHILLIPS: Thank you, Chair. Thank you, Committee.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

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

Mr JOHN ENGELER, Chief Executive Officer, Shelter NSW, sworn and examined

The CHAIR: Thank you, everybody. I welcome our next witnesses. Would you like to start by making a short statement?

MICHAEL CARNUCCIO: Yes. Thank you to the Committee for your invitation to appear here today. I would like to acknowledge that I am on Gadigal land and pay my respects to Elders past, present and emerging. The community housing sector owns or manages more than 54,000 homes across New South Wales and in the past decade our members have built almost 6,000 affordable homes in New South Wales, contributing \$1.8 billion to the economy, with an additional estimated 2,600 homes in the pipeline to be built by 2026.

Our priority for CHIA NSW and its members is to ensure that the planning system delivers an adequate supply of safe, affordable and appropriate housing across the State. CHIA NSW recognises the potential for the housing and productivity contributions to establish a reliable and ongoing funding base for growth-enabling infrastructure. We strongly welcome and support the inclusion in the bill of affordable housing as infrastructure which can be funded from the contributions. Alongside transport, open space and community facilities, social and affordable housing is critical, growth-enabling infrastructure. It is needed to house people in lower-paid jobs who are essential to supporting productivity and liveability. These are, for example, health and childcare workers, retail and hospitality staff, as well as other essential workers.

Community housing providers do not receive a market return from the housing they build. The rent revenues generated by social and affordable housing are insufficient to fund the cost of its provision. As such, the delivery of below-market housing requires a subsidy to ensure its viability. In light of this, CHIA NSW strongly supports exempting social and affordable housing from paying infrastructure contributions. This will ensure that the contributions do not act as a barrier to the delivery of this vital infrastructure.

Current government investment in social and affordable housing falls far short of the ongoing investment required to address current and projected shortfalls. The housing and productivity contributions can provide an additional source of funding that can be leveraged with co-funding provided by community housing providers to drive additional affordable housing supply. However, ultimately, this will depend on how much funding is made available through the funding allocation process, so it's critical that this process occurs in a transparent, evidence-based way so that affordable housing is considered alongside other infrastructure needs. Thank you, again, to the Chair and the Committee for inviting me today. I'm happy to answer any of your questions.

The Hon. ANTHONY D'ADAM: Can I ask how that model would work for developments where only a proportionate amount is allocated to affordable housing? How do you envisage that would work?

MICHAEL CARNUCCIO: Which model?

The Hon. ANTHONY D'ADAM: The idea that you would exempt affordable housing from the contributions in the development—

MICHAEL CARNUCCIO: It could be exempt on a pro-rata basis, so you could just apply an exemption to the part of that development that is social and affordable housing.

The Hon. ANTHONY D'ADAM: In the situation where a developer gives an undertaking to allocate, I don't know, 10 per cent of the floor space to affordable housing for a 10-year period, would that be treated the same way? Under your proposal the exemption would apply on a proportionate basis, but if it's only for a fixed period of time as opposed to in perpetuity do you have any views on how that might be—

MICHAEL CARNUCCIO: I think that's a good question for discussion. Our members tend to keep the housing for the long term, so if it is housing delivered by a community housing provider then it would be kept for longer than 10 or 15 years. But, yes, there are concerns around where it's only for a short period of time. It could be a lesser discount, potentially, depending on how long it is retained for.

The CHAIR: Thank you. Would you like to make an opening statement and then we can ask questions of all?

The Hon. ANTHONY D'ADAM: Sorry, I jumped in too early.

JOHN ENGELER: Certainly. I too would like to acknowledge the traditional owners of the land on which we are meeting, the Gadigal people of the Eora nation, and pay my respects to Elders past and present. It is particularly significant for we in the shelter movement to acknowledge that this land is unceded. Anything to do

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with housing and housing security must acknowledge that we are on this land. Thank you, first of all, for the opportunity to present to the Committee today about the housing and productivity contributions bill. By way of background, Shelter NSW is a not-for-profit organisation that conducts research and advocacy to advance our vision of a sustainable housing system that provides a secure home for all.

We have been operating since 1975. We're a member-based organisation that represents a diverse network of interests, which includes both organisations and individuals. We focus on the needs of households on low and ordinary incomes. We engage our members and experts to do research, discuss and advocate for reforms to housing policy that are good for our economy, society and for the environment. Our concern is for housing affordability, especially for the lowest 40 per cent of income earners, who, in the main, because of the long-term affordability crisis—and I reiterate, we are in a crisis—are renters. While we have a high focus on the serious lack of social housing across New South Wales, our concern also extends, particularly today, to ordinary people—key workers who are suffering from housing stress across the Greater Sydney area and, increasingly, in cities all over the region. Shelter NSW again thanks the Committee.

We've just got a couple of observations, and I'm happy to speak to these in more detail later. We're supportive of the bill and we're pleased to see infrastructure contributions including the delivery of affordable housing options within the identified regions, effectively of that of the greater Six Cities Region. We understand that the bill replaces parts of the EP&A Act to allow the Planning Minister to impose contributions on developments to help pay for State infrastructure, and that it replaces a complex system of contribution charges with a simple and modest charge levied across a broader base. It supports the provision of roads, railways, parks, schools and hospitals—and, of course, affordable housing—and often we take these things for granted. We acknowledge and support that, if implemented well, more affordable housing will result and could be provided—to answer the earlier question, possibly—in perpetuity and administered by our colleagues here in the not-for-profit and community housing sector. We support that the new scheme will not affect the local infrastructure contributions currently paid to councils.

We welcome these reforms, as they aim to reduce complexity and improve transparency in what is otherwise the existing, very complex system. We welcome the inclusion and recognition of affordable housing as a component of essential infrastructure with that obvious nexus to productivity. We have a few areas of uncertainty about the contributions, which would be how to prioritise the express use of the contributions for more affordable housing as opposed to having to compete with other areas that of course are noteworthy. But our interest here today is that the contributions be, as much as possible, used for affordable housing; and that particularly that affordable housing is targeted, known, well located and ultimately exists not just in the longer term of 10 or 15 years but in perpetuity.

We have three main areas of general comment or concern: How to make sure we get as much of the contributions rightly diverted to affordable housing that, but for this, would not otherwise exist; how to ensure that it's targeted, can be achieved within certain time frames and is ultimately, of course, not just for the Six Cities—the 44 LGAs that roughly equal that area—but by logical extension the whole of the State; and finally, how to make sure that it's not just well located but is obviously benefiting the people who would most need this. Again, we talk about key workers and essential workers. These are the carers, the cleaners, the checkout operators, who kept us all fed, safe and watered during COVID. If anyone is looking for what is a good working definition of an "essential worker", it's usually someone who doesn't have the opportunity to ring up and say, "I might work from home today." That is pretty much a clear way of making the distinction. We want to make sure that, as much as possible, thriving, good, communities get the key workers housed near where they need to be. When we talk about housing and productivity, they are linked. It's not in isolation. That is our main thing.

I suppose the gold standard for that—and I'm happy to finish on this and take other questions—is "in perpetuity". It solves some of those issues about how you do it and pro-rata it—the best and highest use. Just by way of a little metric, 10 units given in affordable housing for 10 years is effectively the same as just one in perpetuity. Those 10 years fall away. There are a couple of schemes that we could talk to at the moment where the 10 years happens remarkably quickly when it comes to what to do after that. Again, our gold standard for this should always be perpetuity. I might leave it there. I'm happy to take questions on notice and, of course, we will be making a submission by close of business today.

The CHAIR: Thank you. I'm sure all of my colleagues have some questions. Can I just start, though, with the "in perpetuity" notion? Are you suggesting that is something that should be written in at this kind of architecture point?

JOHN ENGELER: Yes, unequivocally—and increasingly, if I must say.

The CHAIR: Okay, thank you. Mr Farlow, I can see you're jumping.

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The Hon. SCOTT FARLOW: No, that's fine. I was just attentive, that was all. Thank you very much to both of you for being here today, and thank you for both your submission and your anticipated submission as well; we know the time frame and the turnaround has been short. From what you've said, you're confident that there will be some allocation to affordable housing as a part of the housing productivity contribution. While regional infrastructure defines affordable housing, the housing and productivity contribution fund document provided by the Department of Planning and Environment so far has outlined that the growth-enabling types of infrastructure include:

- Active transport
- Transport
- Education
- Health
- Emergency
- Justice
- Open Space and conservation

It doesn't mention affordable housing at all. Is this a concern that you have?

MICHAEL CARNUCCIO: It is. I would clarify that I'm not necessarily confident that funding will be allocated for the affordable housing. I'm hopeful, and it's a good start that it's mentioned in the bill. But, as we've outlined in our submission, we do have some concerns over how that allocation process will take place. It's largely proposed to be through the urban development programs. Our sector is not represented on that, for example. Other government agencies like DCJ who oversee a lot of affordable housing programs aren't represented on that either. So yes, we have some concerns over that process. We've made some suggestions for how that process could be improved so you've got more representation and an opportunity for other organisations to be able to feed into that allocation process.

The Hon. SCOTT FARLOW: Where the exemption exists for affordable housing, that it doesn't have to pay a housing and productivity contribution payment, there has been some criticism from some councils that there still is an impact—and I'll just play devil's advocate in this—from affordable housing being built, and the suggestion of Mr D'Adam before in terms of the potential that you could have something that is for 10 years' affordable housing taken off. City of Canterbury Bankstown Council, for instance, has made the suggestion that there could be the potential for a shell entity to exempt them from such charges. Do you see any way that that could potentially be strengthened so that providers with bona fides like yourselves were captured but maybe some others weren't?

MICHAEL CARNUCCIO: Whenever a development's approved there will be conditions of consent. If it's only meant to be kept for a certain period of time, that will be in the consent. Often, if it's to be kept in perpetuity, there will be things like restrictions on title. The ministerial planning direction could specify that the exemption only applies in these conditions when it's kept over this period of time. That might help address some of those concerns.

JOHN ENGELER: Just further to that, last year we gave some information about the more effective running of what we call new generation boarding houses. We were very strong in saying that the best and surest way you can make sure that those loopholes, if you like, or any sort of shell or otherwise disingenuous ways of providing the product or taking the benefit are closed is by insisting that they be run by not-for-profit or community housing organisations. It's a belts-and-braces way of making sure.

The CHAIR: Can I also ask about the seniors housing and the exemption there? Is that something that you're supportive of outright, or are there qualifications around that in terms of defining senior housing?

JOHN ENGELER: There are two things I would say. One is that I might just take it on notice if we need to get some more detail. But as a general proposition, yes, it's another area of clear market failure or the market falling short and not providing—that is not only the at moment, but we anticipate it will continue to fall short in the area. In order for us to, either organically or through these incentives, provide more senior housing in areas where it is otherwise needed, it should be included.

MICHAEL CARNUCCIO: I would just add that there's already precedent in terms of local contributions, and seniors housing is often exempt from those.

The Hon. PETER PRIMROSE: If this bill becomes an Act, how do you see it affecting housing supply and housing affordability?

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MICHAEL CARNUCCIO: I think the key thing is the way that the charges get implemented, and my understanding is that they will be phased in over time. What we have always said is that the key to infrastructure charges being able to be accommodated by development is to be able to give the market sufficient notice so that then, when landowners are purchasing or selling land, it comes off the cost that is paid for that land. In that respect, over time, it shouldn't really impact development viability. I also flag that this was a recommendation of the Productivity Commission. As part of the review that they did, they had modelling undertaken of their whole suite of reform proposals, and that also echoed the fact that, over time, these costs will come off the land. Essentially developers will pay less for the land because they'll be factoring in all of these additional costs.

JOHN ENGELER: Further to your point, in terms of necessarily involving the community housing sector as part of the delivery of this, and I might come back to a bit more context about that in a minute, the way that you could make sure that the supply is owned in perpetuity and then leveraged—again, by definition, these organisations, as part of their set-up, can't charge more than roughly 75 per cent, sometimes a little bit higher, but certainly less than what the market would otherwise provide. Because they're not-for-profit by definition, the contribution has a leveraging effect and can be traced back through. They can do more with this than would otherwise happen, so it addresses the supply—more of it—and moreover it's more affordable because to not be would be repugnant to their very constitutions.

The Hon. JACQUI MUNRO: In terms of the transition from the SICs to this scheme, do you see any impact to your members that could be problematic or need to be managed?

MICHAEL CARNUCCIO: It's not an area that I've thought of. I'm not sure how many members would be captured by the SICs, because they're very specific to precincts and they don't necessarily tend to have a lot of affordable housing in those areas. It's something that I'd probably have to take on notice.

JOHN ENGELER: One piece of research, which we didn't have when we last looked at this issue but I'll table as part of this, is a piece of research that we've done most recently about the 10 local government areas in New South Wales that are most under pressure in terms of housing stress. Some of the areas aren't what people expect. Obviously, Byron Bay is there and a couple of other usual suspects, but even areas like Cessnock now face problems around affordability, lack of supply and low vacancy. I'm happy to table this report and give it as part of our submission. Seven out of the 10 that we look at are within the six greater cities areas, so we've got some information on that.

The Hon. JACQUI MUNRO: I have one more question around the willingness of local government to engage particularly with the members that you have providing community housing. Do you think this will have an impact in any way on how willing local governments are to engage with you and your members?

MICHAEL CARNUCCIO: I hope not. Under the bill, they will still have the ability to, through their own planning schemes, put in place affordable housing contributions. There are other means, like voluntary planning agreements, for example, through which councils can start to support and secure affordable housing in their areas. I'm hoping that this won't negate that, and there will still be a role for councils to engage with our sector as well on supply and delivery.

JOHN ENGELER: If we go one further, presumably, the opportunity would exist where we talk about the layering and leveraging that happens when several levels of government—and, in this case, several schemes—are applied. It does have a multiplying effect. To your question, it might actually be that ultimately, because they can see the additional cumulative value, if you like, some councils are more likely to say, "If we add that and that and that, we're getting a much better product, demonstrably to our ratepayers and residents, than we would otherwise get. It's worth doing when we might not have otherwise."

The Hon. SCOTT FARLOW: Just to pick up on that point, one of the concerns we've heard from a lot of councils particularly, but other bodies as well, is in terms of the application in the regions. The money can be raised within Greater Sydney and spent within Greater Sydney as one region, but we all know there's a lot of difference when we go across Sydney. Some councils have said to us that it's difficult to get that support for the nexus of development in their area if that money might be going to the other side of Sydney. Do you or your members have any view in terms of the regional classification and whether there could be an improvement to the regional classification?

MICHAEL CARNUCCIO: It is quite broad for the metro area, and I know under the Six Cities Region it's six regions and not four. So potentially an improvement is to split Sydney up into those three cities.

JOHN ENGELER: On a similar issue, we were asked a question about this at a similar forum last year or the year before, and one of the examples that we gave was around the fact that people don't live and work discretely in any one area in any case. I think I cited the example of a lot of workers who keep the airport running and how they tend not to be able to live close to the airport. I know in the part of the city where I live, the buses

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are well used by people in high-vis vests at 4.00 a.m., 5.00 a.m. and 6.00 a.m. So already we have a city that doesn't get articulated or consumed in one discrete area. They're not towns. People already coexist. To the extent that it wouldn't necessarily be difficult to say that we're still showing the general benefit without it being in a prescribed one-kilometre or old-fashioned town way, I think it's possible, so long as you can demonstrate—I know we use this word a lot—that nexus between from whence the contributions are gained and where they're spent.

MICHAEL CARNUCCIO: When local councils have to put together their own infrastructure contribution plans, they have to publish a list of projects that are going to be funded with that work. So a similar approach could be taken at a regional level when regional or city plans are produced. There could be a schedule that says, "Here are the projects that we are intending to fund through these contributions." And they can be exhibited alongside those draft plans and provide people with an opportunity to comment, and hopefully that will then also improve the transparency of the allocation process.

The Hon. ANTHONY D'ADAM: For the record, could you explain whether social housing is a subset of affordable housing or a discrete thing?

MICHAEL CARNUCCIO: That is a very good question.

JOHN ENGELER: We are very glad you asked that question.

MICHAEL CARNUCCIO: If you ask a planner, you will get a different response. I think generally social housing is conceived of as a different product to affordable housing. Social housing is housing that tends to be regulated by the State Government. There are specific eligibility requirements and requirements over rents, and there's a shared application pool. On the other hand, affordable housing tends to be more conceived of for higher income groups, potentially like your key workers, for example. It tends to be built and delivered more by community housing providers. So there's a slight difference in who is the target audience.

The Hon. ANTHONY D'ADAM: The bulk of your members would be providers of affordable housing or social housing?

MICHAEL CARNUCCIO: We will manage both social and affordable housing. We manage some social housing on behalf of the State Government. When they build homes, it is a bit of a mixture, but the State Government doesn't build affordable housing in terms of housing that is moderate income, key worker-type housing. That tends to be left to the community housing sector. So it's a bit of a confusing distinction, particularly when you look at the planning definition of affordable housing. It is a bit of an umbrella term that covers housing that's affordable to very low to moderate income households. Those very low income households could potentially also access social housing. So it can be a little bit of a confusing distinction.

The Hon. ANTHONY D'ADAM: Is there a statutory definition of affordable housing?

MICHAEL CARNUCCIO: There is in the planning Act, yes. It's housing that is affordable to very low to low income households. The housing State environmental planning policy sets out what is meant by each of those income groups, and it's based on median income.

JOHN ENGELER: In terms of the ordinary and every day, you're absolutely right. You've touched on what was otherwise going to be an area that we could talk about, which is that we use the word so generously that people don't quite understand what we mean. If I could be indulged a bit, social housing is better understood as public housing. Between the community housing organisation that runs it on behalf of the State, the Department of Communities and Justice, and itself there are roughly 150,000 dwellings in New South Wales that fall under that category. Of the people who are in public housing—social housing—which is most of that, 95 per cent are on a statutory income. It's really very low income. It is a statutory income, often the pension, and 5 per cent might be people paying market rent.

In the past 25 or 30 years—and it's a good news story for New South Wales—we've developed a new product, a new increment, if you like, of what is the housing continuum or the housing spectrum, and that is affordable housing. This is a bit of a crude analogy but I'll use it because it seems to work: It's a bit like premium economy. It's closely related to what would otherwise be economy class on a plane but it's something more, aimed at a different group. It's worth making the distinction—again, notwithstanding the technical and legislative loops we can get into or turn yourself inside out about on this—that it's generally best understood that it's aimed at workers who are low paid and essential, often shift workers travelling great distances to get to work. They're on moderate incomes, usually renting in areas not close to their work, and they are eligible for this product because, to them, paying 75 per cent of the market rent, roughly, off a very low income, makes a massive difference to them.

We use the term, sometimes interchangeably, "social and affordable housing". Two things—they are very discrete and different things. Affordable housing is exclusively run by the community housing sector. State

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Government does not operate affordable housing as a product; it's new and different. Unfortunately, and I have to be honest about this, despite the great, fertile ground we've created over the past 25 or 30 years, there isn't as much affordable housing as people might think. Of the roughly 150,000 dwellings that we had, at the moment we are pegging at about 10,000 dwellings, by research that has been done by our peers. But, of those, a number are time limited. They're part of a scheme that might come to an end—in this case, the National Rental Affordability Scheme. Even though we talk about it with great passion and enthusiasm as a thing, it's not as much as people might think. It's still relatively new.

This bill and the amendments that are proposed present an opportunity—that's why we're quite enthusiastic about it—to grow that sector. It's clearly needed. Other countries have it. We've demonstrated through COVID what a difference it makes to have. When we think about aged care, for example, it's very hard sometimes to be compliant in aged care if you don't have the key workers there to turn up to do the shifts to then get accredited to say you've got enough staff on. In the northern beaches and in the eastern suburbs of Sydney, aged-care providers have difficulty being compliant with staffing requirements and ratios. Why? The nexus is between productivity and housing. If you've got enough housing for people so they're not travelling at night—huge shifts—back to where they live, often at Leppington or wherever it is, that's where the two work together. To be clear: It is one of those things that's quite confusing, so I'm happy to take any questions on what's public housing and what's affordable housing.

The Hon. ANTHONY D'ADAM: In terms of the stock of affordable housing, is it allocated on a market basis, on a mixed market and some kind of priority system, or is it a waiting-list system? How is it allocated?

The CHAIR: When you address that, could you wrap in the affordable Housing SEPP and how that operates? The Committee might benefit from that.

MICHAEL CARNUCCIO: Yes. It's not the same one pool of applicants like it is for social housing, where the State Government sets the eligibility requirements. It pretty much comes down to how it's delivered. If it's delivered through the Housing SEPP then it will have to apply the ministerial guidelines for affordable housing, which have information around how rents need to be set. If it was delivered through the former National Rental Affordability Scheme, or NRAS, that had its own set of requirements. So there is variation. But under the ministerial planning guidelines, which a lot of the housing gets delivered under, it would be roughly 30 per cent of the household income.

The Hon. ANTHONY D'ADAM: Are there waiting lists for affordable housing?

MICHAEL CARNUCCIO: There's not an official waiting list. Sometimes CHPs will get together. They've got almost like a real estate website, where they will publicise housing that's available, and people go to them. CHPs may have their own waiting lists, but there is not a centralised waiting list for the affordable housing products. They will advertise it through their own mechanisms.

The Hon. JACQUI MUNRO: Following on from that, is there a typical business model that community housing providers have for their revenue streams and government funding? How does that work? Is it standardised or does each housing provider have quite a unique way to fund their operations?

MICHAEL CARNUCCIO: It's quite a broad church of an industry. Even if you look at the size of the organisations, there will be some really large ones that would have a portfolio of thousands of homes and others that would have tens of homes. So it would vary. It really depends on how they have acquired the homes. Are they a developing CHP or are they just a manager CHP? The ones that have a larger portfolio may have some equity that they can use to borrow against; others will be more reliant on government funding, so it's variable. But I would say the common factor is when CHPs are developing, they would often blend together funding from a range of different sources.

JOHN ENGELER: I might add to that. We sit outside; Shelter sits across the whole housing system. One of the things that we've observed more recently is that we probably lump all the community housing sector providers together in one homogenous category to our peril. We've identified at least three discrete areas. There are the tier-one developers. So they build, they take on development risk and they own in perpetuity. There are about four or five of those in Sydney, including City West Housing, which was the original model. The second group would be smaller providers that are very much around the services that are provided to support the tenancies. That's often the distinction between community housing and DCJ. Even people who have been experiencing the delivery of housing—public housing or otherwise—for years will say this: There's a way in which community housing organisations are able to, generally, operate better on the ground with local communities, and that's particularly the case for some of the smaller providers.

Finally, it's worth making the distinction that there are the church and charitable NFP community housing organisations. They tend to be able to—I think, just watching from afar—also deliver a slightly different nuanced

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product, if for no other reason than they often have members, lots of volunteers and generally land of their own. When it comes to the support services, it's often another ancillary arm of their business. I know, for example, the SAHF fund, which was a round of funding that was issued a couple of years ago, in one of those rounds I think the church community housing organisations or the faith-based community housing organisations ended up being able to bid and successfully get about 65 per cent of that round, which also included some Federal NHFIC funding because of the way they were able to demonstrate that connection with the essential support services that go with it.

That's a relatively recent observation that we're starting to make. When we talk about the community housing sector, it's worth making some distinctions. I'm sure other more qualified people would cut them other ways. But the development ones—ones that are small, nuanced, niche and run properties around support—are in smaller numbers. I'm increasingly seeing that the faith-based ones also form a slightly different corner of what is the community housing sector.

The Hon. ANTHONY D'ADAM: Can I ask about the relationship that exists—as part of a development consent process, a developer has to allocate a proportion of the floor space to affordable housing. How does that model work and who decides which housing provider actually manages the properties?

MICHAEL CARNUCCIO: Great question. If you're referring to a local council scheme, when the council puts together its planning policy, it will also have put together a policy on allocating that funding. The few councils that have schemes would tender out to a CHP, or more than one CHP, and then it will have a list of CHPs that it will use to manage the homes or, in some cases, it will actually transfer ownership to that CHP. Then there are also decisions around whether the home should be provided with the development or there should be a cash contribution. Again, that will come down to the council's own policies and preferences around that.

The Hon. SCOTT FARLOW: I have one last question. I am prompted by that question. Are you concerned at all that this fund could potentially act as a disincentive to councils that don't have affordable housing policies, where they say, "Okay, it's going to be taken up by this housing productivity contribution fund anyway, so we don't necessarily need to enact our own policies in that regard"?

MICHAEL CARNUCCIO: Yes, there could be that risk. The added risk is that there is no certainty over just how much funding will be made available for affordable housing. So some certainty around that would be important. But obviously there will also be a role for us to continue to engage with councils, to make the case to them around what they can still do to deliver affordable housing. We know the need is so great, so we need to use every single lever at our disposal.

JOHN ENGELER: To follow on from that, councils are already doing this. They're not bound by what they're compelled to do at the moment. There are some really good, forward-thinking councils. There's a whole raft of schemes, from countering the forbearance of rates, for example, in the case of Newcastle city council, and Shoalhaven council has dedicated some land. I think Central Coast Council, similarly. They're already doing other things. Such is the need, the crisis, for housing—particularly for key workers—councils are already leaning in in a whole raft of ways to help facilitate the provision of this discrete product, generally administered through community housing organisations.

The CHAIR: I was going to say that everybody has probably got some visibility on how hard local councils are doing it, given they're the closest to the constituents who are suffering and feeling the weight of the crisis more than anyone. I saw something on social media last night from the Byron mayor literally going, "Crisis, crisis, help." I think councils are doing everything they can.

MICHAEL CARNUCCIO: The difficulty that councils have at the moment is that the current scheme is very piecemeal. Councils have to go through a very complicated and lengthy process to make the case for affordable housing contributions on a precinct-by-precinct basis. That's a lot for councils to have to go through. The result at the moment is that there are very few areas where this is in place. It would be great if that process could also be streamlined so that it is a lot easier for councils to put these requirements in place. That might in itself incentivise more take-up.

The CHAIR: Could I just ask one final thing? With the affordable housing that is delivered through actual houses as a result of development consents under the affordable SEPP that are supplied to the providers, is there any thread of experience that those houses are of a lesser quality in terms of the housing supply and stock? Do you know what I'm saying? If it is part of a subdivision, is there the experience—and this was put to me—that sometimes the houses that are provided as affordable housing are in the lower lying wet spots or the less desirable areas within the housing subdivision? Is that something that is experienced?

MICHAEL CARNUCCIO: In my experience, it tends to be more in apartment development where you'd get a mixture of homes provided. Often the councils will seek to make sure the quality is the same. The

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challenge that CHPs often face when you've got it in a strata scheme is that that affordable housing has to then pay all of the same strata costs. That can then erode the affordability from an operational point of view to the CHP. There are advantages in cash contributions where there is land that you can then use to develop out for a purpose-built scheme that can then be tailored to the actual need of those occupants.

JOHN ENGELER: It is worth noting—and it's a trap for new players—that when we talk about housing affordability, it's hard not to think that necessarily might be wrongly confused with low-cost construction, for example, and/or poor amenity. One of the things that we always say is that you have got to make sure—and it's a bit of a nice way of thinking about it—that it's not just one A. It has to have affordability, of course, but it must have good amenity and shouldn't be at the expense of that—and accessibility and all of those other words that go with it, like appropriate. It is something to watch for. If we only look through the narrow lens of affordability itself, we might miss the amenity one.

The CHAIR: Hence why it's fundamental that your sector is involved in the distribution, the allocation and how anything under this new scheme in terms of affordable housing is in fact ultimately delivered.

JOHN ENGELER: Absolutely, yes.

The Hon. ANTHONY D'ADAM: Is it possible for affordable housing to become unaffordable?

JOHN ENGELER: I'll make a general comment. One of the conundrums that we often have at the moment—and Michael might talk to it, if I'm not treading on his toes—is that sometimes we're looking at new schemes and we're developing areas that otherwise have some low-cost housing anyway, so there's a bit of a contradiction. One of the things that is a bit odd and that we often have to deal with is that people say, "Hang on a minute. We just saw an ad for a lovely unit. It says it's discount to market rent, but that's still unaffordable." It is discount to the market rent of a brand new, high-spec product, often with an ensuite, a bathroom and better air conditioning. Whilst it's relatively less expensive than the product, affordable housing itself at the moment tends to be articulated in brand new stock. Until we've had a generation of it, or we have some other schemes that identify and instead replace low-cost accommodation that already exists, we are going to have that slight bump where there's a bit of a paradox there. Have you got anything?

MICHAEL CARNUCCIO: I think that's a good answer. Under a lot of, for example, council schemes, they will stipulate that the rents need to be 30 per cent of the income. Again, it comes back to that pathway through which it's delivered. If it's capped on a percentage of the income then that cap will always remain.

The Hon. JACQUI MUNRO: This is kind of a follow-on from that. Where there is existing government-provided social housing, are there good ways that those areas can be developed further to include affordable options? Waterloo, as a development, springs to mind. Is that something that should be rolled out further?

MICHAEL CARNUCCIO: Yes. We're quite keen for redevelopment models to better utilise the CHP sector. Often the CHP is the secondary partner that just comes in to manage the homes. But we've seen examples—for example, in Redfern, there's a site that was recently tendered out by the Land and Housing Corporation and Bridge Housing, the lead developer. We've seen through that model that they're able to deliver a lot more social and affordable housing on that site than if it was the more traditional Communities Plus model, where it's 70 per cent market housing.

JOHN ENGELER: And we're big supporters of a tenure of not just diversity but neutrality, where ultimately you can't tell by the urban form whether somebody rents, whether it's social, private or public, what extent is shared equity and all sorts of other schemes. I have one anecdote. During the lockdown that was COVID, buildings that were exclusively tenanted by social housing tenants presented certain issues in terms of making sure that all of the problems that are otherwise associated with COVID were managed well. It was an interesting thing to watch how the community housing sector, when it had buildings that had mixed tenures—so it still had essential workers in some of the buildings; one in particular in Western Sydney—had to come up with a completely different way.

What was good about that was there wasn't this sense that people were being treated in a particular stereotyped way. This building was occupied by social housing and affordable housing tenants, so there were all of the challenges of making sure that during lockdown, when there were a lot of people with COVID, that building was able to still operate and satisfy various health requirements, but people could still get out and work if they were essential workers. That demonstrated to us the value of having mixed tenures and always having social and affordable housing mixed.

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The Hon. PETER PRIMROSE: I know you have addressed this in part already, but looking at housing affordability, the development industry has called for the payment to be deferred to the occupation certificate. Do you have a view on that?

MICHAEL CARNUCCIO: No, not specifically. I haven't really given that one a lot of thought. I would suspect councils may have some concerns if it was a local contribution to that timing.

The Hon. PETER PRIMROSE: It doesn't specifically affect the council contribution.

JOHN ENGELER: Outside of that, we had a view that the development industry would like to have certainty known and predictability. So if there's a contribution coming, the earlier that it could be provided would give whoever's administering this comfort. I think last time we suggested that if there was a way you could possibly incentivise—so rather than waiting for the last possible opportunity to provide it, if it was provided 18 months or two years ahead and it was there, that presented some sort of an opportunity to be incentivised or discounted or something. Those funds being able to be garnered earlier, rather than waiting for the OC, if administratively that is one less bump that has to be worked out, whether it's through council or whatever this body is, it does make it a bit easier if the money is gotten up-front rather than waiting until that point. If that needed to be reinforced through some incentive, reward or discount then that would be worthy of looking at.

The Hon. JACQUI MUNRO: Michael, you referred in your submission to the lack of certainty around the extent of funding that would be made available for affordable housing. Do you think it would be worthwhile having a percentage term introduced to the legislation?

MICHAEL CARNUCCIO: Absolutely. We would be thrilled if that was the case. Failing that, as I said before, it'd be good if there was some sort of infrastructure schedule at least, produced alongside the draft plan, so that you would be able to feed into that process.

The Hon. SCOTT FARLOW: In terms of that percentage, what would you see it being?

MICHAEL CARNUCCIO: That's a good question. Even if it's a few percentage points over a large base, it's not going to be insignificant—

The Hon. SCOTT FARLOW: It's projected to be \$700 million a year.

The Hon. JACQUI MUNRO: That's right.

MICHAEL CARNUCCIO: So 10 per cent would, I think, be a good starting point. That is certainly what the Greater Cities Commission was looking at in terms of their precinct-based targets. That could be a good starting point.

The Hon. JACQUI MUNRO: And you would concur with that?

JOHN ENGELER: Yes, I would.

The CHAIR: There was no mention of the biodiversity aspect of the proposed amendment. Do you have any feedback or any broad statements around funding for biodiversity outcomes et cetera in relation to your expertise and field of work?

MICHAEL CARNUCCIO: No, not specifically. I think our members' priority is obviously being able to support the sector to deliver supply and have that exemption in place. Obviously, we're also very focused on climate and environmental issues and any support to enable those outcomes is important. I'm not sure what the concerns are specifically though around that biodiversity aspect, so I can't really comment on that.

The CHAIR: No problem.

JOHN ENGELER: I might be completely off topic here but, just generically, I know that one of the things we've noticed with the revised plans for Redfern/Waterloo, or Waterloo south particularly, was the difference that's made when we address public areas that have, for example, deep soil, huge shade areas—the difference that can be made for the amenity of communities is quite profound. To the extent that some of the contributions could otherwise also be used directly around furthering and creating better amenity in an environmental sense for communities around bigger parks, deeper soil, more shading—that's not too far of a leap. I think it's not incorrect to suggest that there could be ways in which that necessarily helps communities, particularly where—we're talking about renters in apartments often—we see people existing around a lovely big park area. That's a really decent way to be. It helps this idea that people are happy to live in two-bedroom units with children and pets for longer. It's a bit of a long bow to draw, possibly—it's not our area.

The CHAIR: I think it's exactly on point. It's ultimately about the natural environment, isn't it, and the wellness and health of that.

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JOHN ENGELER: Yes.

The CHAIR: Thank you. Did you take any questions on notice? I think you may have.

JOHN ENGELER: About the seniors. I'm going to get back to you in a little bit—just a clarification about seniors.

The CHAIR: Wonderful. We've resolved to have questions taken on notice returned by close of business on Tuesday. You may provide clarifications to evidence and additional information within 24 hours of the receipt of the transcript.

JOHN ENGELER: That's fine.

The Hon. JACQUI MUNRO: Also, the question on Cessnock council and those seven out of 10 local councils.

JOHN ENGELER: I've got that to take.

The CHAIR: Thank you so much both of you; it was extremely helpful. We recognise, once again, the very short period that people have had to contribute to today.

(The witnesses withdrew.)

CORRECTED

Mr JOHN BROCKHOFF, National Policy Director, Planning Institute of Australia, sworn and examined

Mr GREG NEW, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to start by making an opening statement?

JOHN BROCKHOFF: The Planning Institute is the professional body representing the interests of planners in Australia. PIA have made detailed representations on earlier bills and have engaged in working groups with the New South Wales Government on infrastructure contributions reform, and we're happy to make those available. We appreciate that local and State-based infrastructure contributions are vital sources of funding for enabling infrastructure for socially and environmentally sustainable growth, alongside an imbalance with other significant sources of infrastructure funding. The Planning Institute supports the collection of infrastructure contributions for State and regional infrastructure, aligned with strategically planned growth, especially for enabling infrastructure for social and affordable housing as well as specific infrastructure to enable housing and other urban growth to occur.

We support the housing and productivity fund being hypothecated to the infrastructure items included in an infrastructure opportunities list and not into generally consolidated revenue. The Planning Institute supports clear accountability for the timely expenditure of the fund on identified strategic infrastructure. We also note that the amount of any biodiversity or transport contributions is not specified up-front, and it's still unclear how much these additional contributions will be, and when, where and how they'll apply. This is a weakness because developers require certainty about the costs as early as possible in order to determine feasibility and timing of developments. We would certainly support guidance on the decision-making rules and priorities for the inclusion of these infrastructure items plus others within a feasible contribution level. This is to ensure that an appropriate basis exists for managing competing local and infrastructure elements within the total contribution level, noting that the transport and biodiversity amounts are not yet able to be specified.

Ultimately, PIA would appreciate further guidance becoming available shortly on the initial infrastructure opportunities plan, i.e. the longlist we prepared, and the frequency of reviewing and updating this plan or the ultimate shortlist. Ultimately, the Planning Institute would support the housing and productivity contributions to help deliver more inclusive urban renewal and higher amenity urban renewal, and specifically enabling the adopted strategic plans of government to be fulfilled, both in existing urban and greenfield settings. Perhaps Greg might want to add to that opening comment.

GREG NEW: I didn't have much to add to John's statement. I applaud the bill in terms of finally there's some clarity around that there will be a standard regional contribution for the highest density areas in New South Wales. It removes a lot of the uncertainty that there was around the former regional infrastructure contribution that didn't go forward in the legislation last year. So that's to be applauded. I would reinforce Mr Brockhoff's statement about the uncertainty—that there's a certainty in terms of the base amount but there is uncertainty in terms of how, where and how much the strategic biodiversity component will be and the same for the transport project component of the HAP.

The Hon. SCOTT FARLOW: Just as an aside, in terms of your former submission to the last inquiry, I had a quick look there and it doesn't seem to be on the site. If you could share that with us, that would be great. It might have come through as name suppressed or something at the time. I'm not sure. It would be appreciated to see some of the views that the Planning Institute has had in the past. Your membership base, I take it, is a mix of private and public sector planners?

JOHN BROCKHOFF: Correct.

The Hon. SCOTT FARLOW: Fantastic. In terms of that uncertainty that you see when it comes to the transport project component and strategic biodiversity fund as well, is there any insight that you have in terms of how they could be set or under what methods? For instance, when it comes to residential dwellings, we have a per dwelling charge. Would you imagine that would be set in the same way or do you think it could be set in a different component, for instance as a percentage, or, when it comes to the transport project component, potentially an uplift assessment? Do you have any insight into that?

JOHN BROCKHOFF: I will pass the mechanics of that over to Greg, but I would like to comment. Ultimately, there's a realistic limit to how much can be included in contributions and at some point there will be competing elements that collectively add up to a number that might be beyond what's practical to levy. There needs to be a decision-making framework, a set of priorities and a clear basis for decisions on what's in and what's out. There might be a very long list and ultimately an adopted shortlist of infrastructure items, but once you include

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a range of transport and biodiversity projects there will be competition for a limited amount of contributions below what might be a nominal amount that the market will bear.

The Planning Institute would very much like to see in the future some decision-making guidance on how those priorities would be dealt with. We don't necessarily want to see the local contributions knocked off. We don't necessarily want to see the transport priorities knocked off. But we do want to see a basis for how those decisions are going to be made. I go back to the role of strategic planning here in setting strategic importance for the infrastructure items because at the end of the day what we're trying to achieve is to fulfil the sustainable growth outcomes in strategic plans. We want to see lists of infrastructure items that are most closely connected to the enabling infrastructure that will enable sustainable growth to occur to fulfil those plans. So it would be very useful to see a decision-making framework for how the items that do queue up find their way into contributions. I'm sure Greg, who's a more active practitioner in this field, might have some views on how that might be done.

GREG NEW: The question was about, I think, how much or what sort of rate might apply to those, the transport and strategic biodiversity projects. I can't speak to the biodiversity at the moment, except to say that the Western Sydney area special infrastructure contribution incorporates biodiversity amounts, but I don't know what that component is of the overall charge. As far as the transport goes, there were two examples which I'm aware of. The first example is in the aerotropolis where a special infrastructure contribution applies and it's a two-levy thing. If you're within a certain distance of the proposed metro stations, I think it's a 2 per cent of cost of development charge. The other one I'm thinking of is the Pyrmont special infrastructure contribution, where there's a payment per square metre—I'm not up with it. But it applies to the catchment around the proposed Pyrmont metro. So that might give members a clear list too. They're the only ones that I can think of.

The Hon. SCOTT FARLOW: To that point in terms of regions and regional allocation of support infrastructure, one of the concerns we've heard consistently, particularly from the local government sector, is in terms of the regional hypothecation that Greater Sydney is one region. Does the Planning Institute have any view on that and the regional hypothecation of funds out of the housing and productivity contribution?

JOHN BROCKHOFF: Greg and I both discussed this one. On the one hand, it is important that there be a general connection to what's necessary to fulfil the growth outcomes of a strategic plan; on the other hand, you want to be collecting sufficient money to make it worth your while to have all the admin costs associated with it. I think Greg's got a view on that.

GREG NEW: I think it's already settled—the proposal is that money collected in one region is spent in one region. I think that the debate may be heading towards whether regions as large as Sydney should be split up into subregions perhaps. I don't support that position because the sort of money that has been talked about being raised through the base contribution in Sydney I think is going to be less than \$500 million per annum—which sounds like a lot but in infrastructure terms it is not. I back up what John said that you need to have a critical mass of money to consider a range of projects. If you were to go down to a subregional basis along the lines of the metro strategy subregions, then it just wouldn't be as effective and there wouldn't be the flexibility to apply money to the highest priority infrastructure items.

The Hon. SCOTT FARLOW: The other question, and I guess the theme running throughout the day as well, is the calls for the payment to be deferred to the occupation certificate stage rather than the construction certificate stage. Does the Planning Institute have any view on that and the merits, or otherwise, of that change?

GREG NEW: In this case I don't pretend to speak for the institute, but if you're asking my personal—there is a range of views, as you know, on this. It depends on the circumstances. We've got, for instance, greenfield subdivision. There's no real opportunity and there hasn't been in the recent past with that temporary direction for payments to be left to the building of the dwelling; it's left to the subdivision certificate. That's appropriate and I think that has to continue. Where we're talking about actual building of apartments or buildings that generate the contribution rather than the subdivision of land, the choice is between occupation certificate and construction certificate. I think in order for councils to plan for their activities in terms of—and we're talking about State infrastructure here. My preference is to go with the status quo. The construction certificate, I think, has been established practice for many years. If we are talking about local infrastructure contributions and State infrastructure contributions, it allows the money to come into the system at a time when the State Government can plan for that infrastructure.

The Hon. PETER PRIMROSE: I am asking this of all witnesses: What impact do you think this legislation will have, if any, on housing supply and housing affordability?

JOHN BROCKHOFF: Firstly, housing affordability will not be sensitive to additional supply in the short run. In the very long run—over a generation—if we don't match housing supply and the form and location of housing with household formation and future population needs, the market will ultimately come out of balance

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and there will be, over the very long term, an effect on the price of housing. In the short term, the price of housing is less sensitive to the amounts of supply that the market can bring on, bearing in mind that there are a whole range of constraints other than planning that relate to the rate at which supply can come on board.

The Hon. PETER PRIMROSE: Mr New, I'm specifically looking at this bill. Is this bill going to decimate the housing development industry in New South Wales?

GREG NEW: It goes back to what I was saying before about the uncertainty of the aspects of the bill in terms of the SBC, the biodiversity component, and the transport project component. Any uncertainty for developers is risk and it gets priced into investment decisions. So the legislation sets up a base contribution SBC and TPC. It is the uncertainty around those latter two which concerns me and which could have an effect, in some areas, on decisions about supply by developers. On the other hand, the \$10,000 and \$12,000 per dwelling for the base has been signalled to developers in terms of the Productivity Commissioner's recommendations for the last—two years ago, at least. That is not a surprise and that aspect of the bill won't have any effect on price. It would have been factored into sales, purchases and developers' plans for a couple of years now.

The Hon. JACQUI MUNRO: Following on from that, the City of Sydney council has noted that no feasibility modelling has been published for the contribution scheme. Would you support that modelling being published?

JOHN BROCKHOFF: As a general view, open government is valuable. Any information that provides a greater understanding of this bill is useful.

The Hon. JACQUI MUNRO: Mr New, did you have any specific comments?

GREG NEW: No, nothing specific, except to say—and I'm a qualified town planner; I'm not an economist. The feasibility testing of a standard charge across a region such as Sydney or the Central Coast—particularly Sydney. The impact on feasibility is quite a black box. I am just wondering: I've seen feasibility assessments of contributions impacts and it always depends on the inputs as to what you get out of them. So I like the idea; I agree with John about the transparency—if that can be dealt with. It's just a methodology to get meaningful results. That's my concern with a feasibility assessment.

JOHN BROCKHOFF: Chair, may I make a supplementary answer? I would just like to add that, with most things that relate to input costs in development, the earlier they are known and the more certain that they are known, the greater the likelihood that that is priced into the price that a developer or a proponent will pay for the raw land and the greater the certainty and understanding of what those future costs will be. And the more time there is for those costs to adjust, the more likelihood that price signal will be translated into the price that will be offered for raw land.

The Hon. MARK BUTTIGIEG: Part of the proposition in the bill is to align the funding with this urban development program in order to identify growth and opportunities for priorities for infrastructure. Are you able to give your view on what extra utility that gives over the existing arrangement?

JOHN BROCKHOFF: An urban development program has a close eye on the constraints on supply and the pipeline for supply of urban land. It is focused on identifying enabling infrastructure and barriers and bottlenecks, and it should be well placed to identify—on the one hand, being aware of the strategic outcomes sought at a regional land-use scale. It should also be aware of the specific enabling infrastructure issues and difficulties. And one would be looking, in the guidance that comes out of this bill, for a means for the UDP to highlight those items that are most strategically aligned and most critical in enabling the works that are necessary to bring supply for sustainable growth on line and find its way into the opportunity list and ultimately be prioritised in the opportunity list. Greg, do you have a view on that?

GREG NEW: No, I don't have a lot of information on the urban development program and the way it works now. I hear this a lot in my work. I am a consultant town planner dealing with growth area infrastructure a lot. There is not a properly functioning urban development program currently, is the message I am getting. By urban development program I mean the agreed set of projections about where housing will occur and where jobs will likely occur. It seems different agencies have their own measures of that. But I won't say any more about that because I am not qualified. I don't have the information or the evidence for that, but that is certainly what I hear. I think we actually do need to get on top of the urban development program and the way it runs as part of this exercise.

The Hon. MARK BUTTIGIEG: That was the crux of the question. Under the current configuration, in terms of how it works, there is not really a go-to source of strategic planning on infrastructure priorities and growth areas. It's kind of a hotchpotch approach and there is no uniform agreement on what the go-to source is. Is that a kind of summary of the position?

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GREG NEW: That's my view. There would be people who are in the Department of Planning and Environment who would know a lot more about how it all works, or doesn't work. But, yes, I generally support what you just said.

The CHAIR: You've made some comments about the SBC and the lack of certainty or up-front clarity around that. The SBC is literally just a new fund that will administer or receive funds from an already existing legal scheme. Are your comments around that going to that scheme? Are they comments that the institute or you, as a consultant planner, have had over time about the development of that scheme insofar as it is literally just receiving the funds from a biodiversity certification program? Or do you have any additional concerns about the way that operates and is administered?

JOHN BROCKHOFF: I have no additional comments.

GREG NEW: I have no additional comments except to say that it's just that the ability to impose SBCs in the bill is fine, as far as it goes. It's legitimate. As you say, it's a normal part of development. What developers and planners want to know is how much and where will it apply.

The CHAIR: Are you inferring or suggesting perhaps applying the current offset scheme's costs? I am just trying to understand what thought you may have given to how you achieve what you are suggesting is lacking in terms of the cost certainty or indicators.

GREG NEW: Well, all I can cite is—but I'm not across this at all. Again, the anecdotal evidence that comes to me is that the Cumberland Plain Conservation Plan has been—I think but I am not sure—ratified or approved but we haven't seen the detail of what that means in terms of costs across the Sydney region for biodiversity conservation. It is just the delay that we are getting, but it would be good to know what the costs are going to be.

The CHAIR: Say, for example, in terms of the Cumberland Plain Conservation Plan, are you saying the overall costs or those individual project costs that are costed under that? Who would benefit from knowing that in terms of going forward? Is this something that you're saying a particular sector or—I am just trying to work out the utility of the certainty.

GREG NEW: It's the developers that need to price in the charge, per hectare or per lot or whatever the rate is.

The CHAIR: Does the sector currently get an indication from the biodiversity offsets market and what it currently costs to kill 10 koalas or replace 15? Is that something that the developer sector is already factoring in, because I would have thought—there's quite a bit of activity on the biodiversity offsets market, so is there not some lens into it through what's already happening?

GREG NEW: Sorry, I can't help you with that because it's actually not my particular area of expertise. I couldn't even offer some anecdotes on that one. It's not my core area.

JOHN BROCKHOFF: I'd be happy to point out, just in very general terms, that the Planning Institute sees the offsetting arrangements as not the first cab on the rank. The first cab on the rank is to avoid harm. The assessment system should operate primarily around creating the channel for development assessment to look towards ways of avoiding harm to Cumberland Plain Woodland, or any other environmental resource, as the first step. I work a lot with council officers and development proponents and planners around mechanisms by which you first hunt for those solutions that avoid harm.

The offsetting arrangements then apply in those situations where there is conceivably a public benefit in being not so much forced but in taking a choice to damage some habitat because there is a broader public benefit and avoidance isn't a valid strategy in that case. In those circumstances the offsetting develops a form of validity to deal with where there is a public benefit and avoidance is not the appropriate strategy. Then it provides a pricing signal to proceed. The pricing signal has got to be such that it is a very strong signal to actually cause harm. It's entirely valid that a pricing mechanism be built in for those situations where the offsetting will cover like for like, to the greatest extent possible. It is a means of getting forward in those situations where harm avoidance is not possible.

That is all very general. I'm not going to comment further on the exact level of what it should be on a regional scale for funding acquisition of conservation land and any habitat, or on how that should translate to a generic impost on development for a region.

The CHAIR: That's very helpful. Do you think that if there isn't the capacity to avoid and there is this next step, should that be within the same locality, district or region? Do you have a view on that?

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JOHN BROCKHOFF: Yes, very much so. The Planning Institute has made separate submissions to parliamentary committees and to elements of the State Government pointing out exactly the notion that the system should be designed to avoid first, and then, secondly, where offsetting occurs, it should be like for like to the greatest extent possible, bearing in mind that some issues are generic.

The Hon. SCOTT FARLOW: When you say like for like, I take it you mean a similar geographic location?

JOHN BROCKHOFF: Indeed. If we are damaging littoral rainforest and we are looking at offsetting, then the offsetting should be littoral rainforest, preferably in the same region.

The Hon. JACQUI MUNRO: That is a different approach to your earlier answer around the regional distribution of funds. My understanding is you suggested that, given the quantum of funds that is expected to be raised—the Minister suggests \$700 million a year when the system is fully functional—if that fund is broken down too much, it will reduce the impact of what it can achieve. Please correct me if I'm wrong and have misunderstood.

JOHN BROCKHOFF: No, there is a conflict there. Thank you for pointing that out. It's a difficult conflict because in a perfect world you'd have a perfect nexus. But we also have cost and administrative difficulties, and we want funds to accrue in the accounts. We've got to manage those two competing objectives to the best extent, and this is a tension.

The Hon. JACQUI MUNRO: Just for my understanding, what could \$700 million get you?

JOHN BROCKHOFF: I'll throw that one to Greg.

GREG NEW: The confusion may have been—I certainly made that comment as well. I was not referring to the SBC; I was referring to the base contribution.

The Hon. JACQUI MUNRO: Yes, I understand that.

GREG NEW: In terms of—what was it—what \$500 million will buy?

The Hon. JACQUI MUNRO: It's \$700 million, according to the Minister.

GREG NEW: Well, I'm neither an economist or an engineer, but in my experience that will buy you some lengths of sub-arterial road—maybe a two-, three- or four-kilometre length of sub-arterial roadway in Western Sydney.

The CHAIR: Thank you both. You took no questions on notice. You will receive a copy of the transcript. If there are any clarifications to evidence or additional information, please return those within 24 hours. The Committee is grateful for your time. We note that it was a very short time frame in which to contribute, so thank you very much.

(The witnesses withdrew.)

(Luncheon adjournment)

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Mr ROSS GROVE, Acting ACT Executive Director, Property Council of Australia, sworn and examined

Mr MICHAEL PLAYER, Acting NSW Deputy Executive Director, Property Council of Australia, affirmed and examined

Mr STEVE MANN, Chief Executive Officer, Urban Development Institute of Australia (New South Wales), sworn and examined

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

The CHAIR: Good afternoon. I now welcome our next witnesses. Would any of you like to start by making an opening statement?

STEVE MANN: I'd be happy to. Good afternoon. I'm Steve Mann. I have had 34 years of experience in the property development industry and I'm a valuer by training. I think, as you've seen in our submission, New South Wales is gripped by a deep housing supply and affordability crisis. Industry and home buyers have the same challenges. We've been weathering the fastest ever increases in interest rates seen in Australia's history, several years of double-digit growth in construction material costs, an energy crisis, labour and supply chain capacity constraints, and we've now got record growth in builders collapsing.

If the New South Wales Government accepts that we are in a housing crisis, it must focus all of its energy on policies which will deliver a turnaround in housing approvals, now down 37 per cent from the peak in 2016, and closely understand the feasibility to ensure projects and achieve financing to get off the ground. The New South Wales Department of Planning and Environment has forecast that we will deliver just 36,000 homes per annum over the next five years, and under the Federal housing accord our responsibilities would be 63,000 homes per annum—a long way short of that and a long way short of the needs of the people of New South Wales.

This is a perfect storm of factors impacting housing. We contend that now is not the time to increase charges and to further add to the costs of new housing. It will be counterproductive to other initiatives of Federal and State governments. Combined, this H&PC bill, water DSPs and the introduction of the National Construction Code will bake in costs of up to \$100,000 over the coming years for housing. That is not going to be helpful in a crisis. I think that's obvious.

We're supportive of genuine productivity gains at UDIA, delivering timely and efficient provision of regional infrastructure. In isolation, the H&PC bill intends to create some of these outcomes. We're supportive of that objective. What are the changes we think need to happen? We've been talking about a minimum of a three-year period for any transition. This one offers not two years but 21 months of transition. That is not sufficient for investment into housing. The charge should only be implemented after you look at the whole system. I have mentioned the issues with the DSPs that are currently on exhibition. That is a cost of about \$30,000 on a typical project time. We also don't have any information in the H&PC bill around the transport and biodiversity charges. We do not know what those costs are.

We have recommended the Government adopt the urban development program and we're pleased to see that as part of the bill, but without a Cabinet committee to look at housing and infrastructure—led by the Premier, in our view—the process could fail to achieve the \$12 billion the Productivity Commissioner has suggested is available. We also contend that there are more productivity opportunities the bill should embrace: Reset the approach to works in kind in New South Wales, move away from impactor pays and create more pathways enabling developers to deliver infrastructure whilst they're delivering new housing. Look for greater efficiencies in the voluntary planning agreement process.

In summary, the development industry in New South Wales needs to see the new Government adopt as its highest priority the turnaround of this deep housing supply and affordability crisis. Industry needs more certainty to invest in New South Wales in this very challenging environment. This bill needs to adopt the amendments we've recommended and therewith support short-to-medium term provision of housing, whilst also bringing on the key productivity gains we seek together in the long term.

The CHAIR: Thank you. Would anyone else like to give an opening statement and then we'll go to questions?

TOM FORREST: I'll try not to be duplicative, thank you, Chair. I fully agree with my colleague, Steve Mann, that approvals are now at record lows. New home completions for the 12 months to 30 June this year are expected to be around 42,000 across the whole of New South Wales. That compares with what's required under the housing accord for New South Wales, 63,000 homes a year. So if you assume a population proportion of the one million over five years, starting from the middle of next year—2024—on, in order to achieve that

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population projection you need 315,000 homes for New South Wales. That's accepted by DP and, I believe, the Minister. If you divide that by five, you get 63,000 a year. We're currently producing 42,000 a year. That means a 50 per cent increase. That's a lot of homes in greenfield sites, in brownfield sites, in increased height and density, around public transport nodes—all of these things we need to take advantage of.

The major concern that we have is not in the formulation of the housing and productivity contribution payment itself. That has a long genesis: It comes through the Productivity Commission inquiry under the former Government. It was foreshadowed in a bill that was considered by a committee of this place following its first introduction as an addendum or as part of the budget bills, I think, in 2021. They were then deferred over a period of time and, ultimately, set aside—and here we are today. I would say, though, that the introduction of these new charges effectively under the—it used to be called a RIC, a regional infrastructure charge. It was foreshadowed by the former Treasurer in the midyear economic review that was presented to go forward, so the numbers are already baked in.

What we're concerned about, though, is the time frame for the payment of the levy. We're concerned about any additional levies, fees and charges on housing supply. It's the wrong time to be adding to the costs of housing supply, given the difficulties—but I would say "but". But we recognise that there is an infrastructure deficit. Part of getting communities to support increased development is being able to support them with decent amounts of infrastructure—local infrastructure, community infrastructure, regional infrastructure. This helps build that bucket of carrots that might help get the community over the line.

So we support it, but at construction certificate, which is when its intended that this levy be applied, is the wrong time to be applying a levy. It's effectively adding a new tax, a new cost, just as you're going into the beginning of construction. That's the time of peak debt for a developer or anyone who intends to produce property—peak debt. At that time you're going to the bank and you're saying, "Look, there's something that wasn't in our feasibility when you agreed to fund this project. We need to borrow extra money from you now." Generally, because of interest rates rising, because of general uncertainty as to whether or not settlements will come through at the end of the construction period, they'll tend to use that as an excuse to say, "No, you'll have to get that from someone else," so you have to borrow from a secondary lender. Your borrowing costs go from eight per cent, roughly, from a bank to 15 per cent from a secondary lender, the secondary lending market.

At 15 per cent, you could cop it if you were borrowing to pay this additional tax at OC, because at occupation certificate you're within a month or so of completion, people moving in, settlement of the money. Ninety per cent of your gross revenue on the project comes through the door then—you get 10 per cent at deposit, 90 per cent at OC. So you know there's only a month or two to go before you get that money coming back. You might borrow at 15 per cent and think, "I can pay that off." Problem is, if you do it at CC, as currently proposed, you could be 2½ to three years away from OC. So you're borrowing at 15 per cent for a new tax that wasn't previously there in your feaso and you're paying 15 per cent on that. That's why we say there's a case for a deferral from CC to OC. That's what the Productivity Commissioner recommended for all infrastructure charges.

Sections 7.11, 7.12 and now 7.24 state that infrastructure charges should be paid at OC because it is an encouragement for people to get on and construct homes for the community. What we don't want is a disincentive for the construction of new homes. Ironically, if you levy it at CC, you might not get the tax because people will just not progress to the CC, because they can't get the funding, and you don't get the homes, either. That's a worst-case scenario that we want to avoid. We support it in principle if there's a deferral from CC to OC. In our submission we've made a specific recommendation for amendments to the bill as it's proposed. I commend those to you. Thank you very much for your time.

MICHAEL PLAYER: Good afternoon Chair, Deputy Chair and portfolio committee members. Thank you for providing the Property Council with the opportunity to present to this inquiry on the housing and productivity contributions bill. New South Wales is facing the worst housing shortage in a generation. As Australia embarks on a major migration program, demand for housing is surging well ahead of dwelling completions, as you've heard. Meanwhile, escalating interest rates and construction costs are adding further pressures to the future housing pipeline.

Under the National Housing Accord, as you've heard, New South Wales will be required to build 314,000 new homes over the next five years, representing around 63,000 new homes per year. Since 2016-17 Sydney housing approvals and completions have been trending down. Over the last four years the average annual approvals rate has been marginally above 30,000 while the previous four-year average was around 51,000, a difference of more than 20,000 homes. The current composition of greenfield and brownfield development is also imbalanced, with completion of apartments well below the required supply target.

In 2021-22 only 13,000 apartments were completed, representing a fall of around 56 per cent from the peak in FY 2017-18. Not surprisingly, the biggest drop in completions in Sydney has been in the Eastern Harbour

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City. In just three years, between 2018-19 and 2021-22, completions have dropped from 18,600 to 5,600, representing a massive 70 per cent fall. It's clear under these settings that New South Wales will not meet its housing supply targets in the accord. Increasing the charges paid by developers in this environment has the potential to significantly dampen the incentives for investment in housing stock and will only make it harder to ease the affordability crisis.

While the Property Council provides conditional support for the housing and productivity contributions bill, we, alongside our industry colleagues, remain deeply concerned with the disjointed and haphazard approach to infrastructure contributions reform. The housing and productivity contributions bill is only one part of a broader swathe of reforms canvassed in the NSW Productivity Commission's 2020 review of infrastructure contributions. These reforms were designed to fix the State's broken infrastructure contributions system, facilitating streamlined development processes and enhancing access to housing for individuals and families. Combined, as you've heard, the changes to State and local contributions schemes were set to offer a \$12 billion net benefit to the economy over 20 years.

Our infrastructure contributions framework still deserves the certainty, simplicity, efficiency, transparency and consistency that the NSW Productivity Commission reforms originally sought to deliver. Indeed, we need to ensure the contributions system in New South Wales is competitive with respect to other jurisdictions and does not operate as a handbrake on the State's growth. Unfortunately, three years on from that review we've returned to a piecemeal approach to reform, which risks saddling industry with a new wave of costs without delivering the \$12 billion in benefits promised under the original package of four reforms.

That's why we've called on the New South Wales Government to provide clarity to industry, councils and the community on the future infrastructure contributions reform pathway and specifically outline how it will progress all 29 recommendations from the Productivity Commission's review. If New South Wales wants to improve housing supply, it needs to deliver reform that gives industry confidence to invest. Thank you for the opportunity to present an opening statement. My colleague Ross Grove and I are happy to answer any questions from the Committee.

The CHAIR: Thank you very much. Before I flick to my colleague, Mr Mann, just looking at your submission, where did you get the 25,000 per lot in terms of the additional biodiversity and transport components? The only reason I ask is that the submitters earlier had no idea about those kinds of figures. Is there some formula that—

STEVE MANN: It's just literally the numbers that were being talked about last time around when we were in the detail. I guess the main message is that we don't know what those numbers are this time. We expect it will be somewhere in that vicinity, which would cause greater concern, particularly for housing. But it is not just housing, it is jobs as well.

The CHAIR: In that sense, you haven't got any modelling or you haven't seen any from Treasury or anything like that?

STEVE MANN: No.

The Hon. SCOTT FARLOW: This bill in its current form, will it help to you deliver 314,000 homes in the next five years?

TOM FORREST: I'd start by answering that. The Urban Taskforce's view is that in its current form, it would not. It's an additional tax fee and charge that is to be levied at the worst possible time to be adding a new fee, tax or charge. As a result, without an amendment for the housing productivity contribution and other local infrastructure contributions to be paid at OC rather than CC—for the reasons that I went through earlier—it will cause there to be a dramatic pause. The pause won't come from the development community; the pause will come from the banks and the financiers.

You've already seen the banks and the financiers expressing greater and greater concern about the risk of being able to feasibly deliver housing and construction of new homes. If you add a new fee, tax or charge at the point of CC, you seriously threaten then risking the progression of finance to the developer so that they can move from preparation to construction. That is what happens at the point of CC. It's the wrong time. We do believe, though, that the contributions in this particular bill are relatively modest at 12,000 and 10,000—for at least Greater Sydney—per dwelling. If the contribution was made as per the Productivity Commission's recommendations at OC, then we would accept that money would be spent on the delivery of infrastructure that would help support the increase in housing, which we accept all can't come from the government coffers at this time of fiscal constraints.

STEVE MANN: Chair, could I add something?

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The CHAIR: Yes, absolutely.

STEVE MANN: I think it's a great question and a super important question. Really, our message to the Committee is to take this message back to Government. Do you think you're in a crisis? If you think you're in a crisis then watch every move that adds costs, watch every move that makes delays and support industry to deliver. Builders are going bust at the moment. It's a very tough time for industry to deliver. If we're not alive to that across all of policy—we think the Premier's main priority should be ensuring that every government department that impacts housing focuses on that initiative. The review by Infrastructure NSW should focus on how infrastructure unlocks housing; it doesn't at the moment. We must really put the shoulder to the wheel. This bill could, with the changes that we're recommending—again, deeper thinking. The new Labor Government is talking about focusing on apartments. In this particular one, it puts a new cost on most apartment projects, so defer that further for apartments if you want apartments to recover from a 76 per cent fall in commencements over the last three years.

The CHAIR: Can I just ask before we go back to you, Mr Farlow—

The Hon. SCOTT FARLOW: Can we just see if the Property Council has got a comment on that as well?

The CHAIR: Certainly.

MICHAEL PLAYER: Ross Grove will add his comments to this. We don't support it being progressed in isolation. This is a part of a broader set of reforms that needs to be progressed. We provided conditional support based on a number of the recommendations put forward as well by Tom and Steve, but also some changes particularly to the operation of the governance of this bill.

ROSS GROVE: I'd simply say that the contributions framework moves as quickly as its slowest part. When we look at what we've got before us, which is what the previous Government was exploring—the regional infrastructure contribution model—we have had a patchwork framework of special infrastructure contributions. They took forever to create. They took forever to consult on, to report back and then to finalise. Going back to Tom's opening comment, there was usually a component of bill shock that needed to be wrenched back into feasibilities and cost structures for industry in preparing for those projects.

I think this cleans up the State contributions aspect, but going back to Michael's point, we need to clean up the entire system. Things like the water contributions—that doesn't deliver too many improvements in the governance mechanism. If you want to do contributions reform, you need to start reducing some of these holding costs by doing things faster. This contribution has the potential to do things faster. We need to be sensitive about how high that contribution is, and that has been covered off on. But it's very much about ensuring the aspirations of the previous reform agenda—certain, simple, efficient, transparent and consistent. If we can get that on every part, we're going to be in a much better position than we currently are.

The CHAIR: Just on the deferral of when the contribution becomes liable to the occupation stage, we've received some submissions from councils about how, during the COVID period, local contributions were delayed or deferred until that later period and they are still outstanding, in the order of large amounts of money, to some. If that's the evidence, then how does it actually help in this circumstance? If there are participants that are perhaps hedging and it's not a guarantee, then perhaps this is an honest brokered system. This is the one that we're looking at that will help in terms of genuine delivery.

TOM FORREST: I'll answer that one if I may, Chair. It's a good question, and I know it's something that some councils have raised concerns about. The former Government did make some changes to the question of direct nexus of section 7.11 contributions, which is what I think the councils are talking about in relation to local infrastructure fees and charges. What they said was that you could effectively pull up your funds and then spend them in one go. In that circumstance, almost all councils have substantial unspent funds under section 7.11. For example, I know that in Liverpool council it's in the order of \$700 million of unspent section 7.11 charges.

The larger councils in particular are perfectly capable of absorbing a one-off delay. The revenue will still continue to come through. To the extent that you're actually encouraging projects to be progressed, more revenue will come through. If you stop them being progressed, and developers simply say, "Actually, we're not going to proceed to CC because we can't get the money from the banks and our feasibility study is gone, so we're not going to progress to CC," you won't get that payment at all and you won't get the housing supply. That's what we want to avoid.

You also won't get the GST revenue, you won't get the employment benefits, you won't get the company tax benefits and you won't get the payroll tax benefits. The net impact on the total government take is massively negative if you levy this tax at CC. It's what the Urban Taskforce is saying, and my colleagues I think would agree, but it's also what the Productivity Commissioner found. They implemented this during the COVID period,

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and it made a massive difference to stimulating the development sector at a time when employment was going backwards and there were really great fears about our economy. It was a very important and positive contribution. The Productivity Commissioner did his review after that.

He found that, all things considered, it was way better to move that productivity contribution fee, or what used to be called the RIC fee, and other infrastructure levies under sections 7.11 and 7.12 and make them payable at OC rather than CC, because its capacity to stimulate the economy and housing production was greater than the cost of the deferral of the payment. It's something that we've put a lot of thinking into and done a lot of numbers on, and so has the Productivity Commission. It's one of the main reasons why what sounds like a very small nuance to be discussing in a forum like this is really quite critical to the efficacy and effectiveness of this particular charge.

The Hon. MARK BUTTIGIEG: Can I ask a follow-up question, Chair? Just to clarify for the purposes of the Committee, your proposition is that the contributions be delayed both at the State infrastructure contribution level and local council?

STEVE MANN: Yes, that's correct.

TOM FORREST: That is our proposition, yes. That's to stop two separate payment triggers happening, which creates bureaucratic inefficiencies and also a degree of confusion. You've got two processes of having to stamp the form—one at CC and then another one at OC—and a series of financial transactions and accounting. In discussion with the department of planning, they said very clearly to us, and we took it on board, that they would much rather that there was just one process where you could go stamp, stamp, stamp and show it to the certifier, and the certifier would see that they'd been stamped. And you say, "Away you go. You get your occupation certificate."

The Hon. MARK BUTTIGIEG: I understand. Is it not conceivable that you could have this perverse effect whereby, because payment is not due until occupation and occupation is not given carriage—that is, mum and dad, keys in the door—until the payment is made, you could actually delay occupation if there was a gaming of not paying by occupation?

STEVE MANN: Certainly you could delay it—exactly that. You could ensure that OC doesn't happen. In fact, the Building Commissioner must sign off on OC anyway, before that payment is then made.

The Hon. MARK BUTTIGIEG: But this is my point. It could actually result in people not getting in the door.

TOM FORREST: I say no.

The Hon. SCOTT FARLOW: But why would they do that?

TOM FORREST: I say no. The reason is that, because you've spent all that money on the construction of a new building, you desperately want that 90 per cent of your gross revenue coming through the door. You desperately want it. You've had to borrow, and you are paying interest on the borrowing for the purchase of the land, the preparation of your development applications, your architectural designs and your engineering. You've then paid for the construction of the entire building. You're just about to get your occupation certificate for the sake of the paying of the tax. You're not going to delay receiving 90 per cent of the revenue for that building. You're going to pay it with alacrity—as fast as you possibly can—so as to get that stamp on the occupation certificate, so you can take it to the certifier, they can get people in the door and that triggers the settlement payment of 90 per cent of the value of the building. I just don't think that that's an issue.

The CHAIR: Can I just point out that the Productivity Commissioner has submitted a report that isn't suggesting that the payment be any other than what is suggested in the bill now?

STEVE MANN: Well, he did in November 2020.

The CHAIR: That's right. That's what I'm saying. I think there's a change of view according to this.

The Hon. ANTHONY D'ADAM: What do you say to the suggestion that was made by the local government association that it created administrative complexity for them but also this question around provisional occupation versus final occupation certificates?

STEVE MANN: Can I answer that one and add to the previous one?

The CHAIR: Of course.

STEVE MANN: The first point is this does not impact councils. It impacts contribution plans. Councils are administrators of contribution plans, and they deliver the infrastructure they've promised based on those

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contribution plans. So I think there's a conflation of issues here. We did a study. There is \$3.2 billion in the Sydney mega region of unspent contribution moneys paid by mums and dads when they've bought their homes through a developer. That's who has paid it. What you're actually talking about is speed of getting the infrastructure that's meant to be delivered. That's why with the former Government we developed the Accelerated Infrastructure Fund to encourage that money on the ground as quickly as possible. I think what the councils are talking about—and we've got to be alive to the pressures in council land—are the related fees that come. They will still come early in the process. They get all of those fees in the early approval process. I'm not really sure what the issue is in that regard. Sorry, I've forgotten your direct question now. I was going to shoot at that one as well.

The Hon. ANTHONY D'ADAM: I think you've addressed it. What about the suggestion that was made by Shelter NSW about perhaps incentivising early payment? I asked the question about whether, under COVID arrangements, there was interest payment for the deferral. Is it your submission that you'd be happy to pay a higher amount if you could pay it later?

STEVE MANN: We always like optionality. We would stress to you how difficult things are in the industry. There are many growing projects that are stalled and do not commence. I think it's now at about 18,000 units that have stalled in New South Wales.

The Hon. ANTHONY D'ADAM: Is the issue the amount or is it about the timing?

STEVE MANN: Financing is the big issue.

The Hon. ANTHONY D'ADAM: I think your argument was that it was the timing that was the critical problem in terms of when the contributions are levied rather than the actual amount.

STEVE MANN: I think my colleague covered it well. It's the question of peak debt and getting your project financed. If you can delay that to a period when you are close to the revenue, it's much easier for the financing to be approved. That's what's happening; it's falling over because the project doesn't survive the feasibility test.

TOM FORREST: I like the fact that you're thinking that way. I think that's a positive—the idea that you might pay a lesser amount if you're prepared to do it at CC, I don't think very many would take that up. The finance is so tight at that point because you're just about to draw down on the construction of the building. Unless you've got a very large bank account—it's true that a very small amount of developers have that. It is true that they may choose to take the earlier payment, but I suspect most wouldn't. If I may address the Chair's question, Mr D'Adam, if that's acceptable? The Productivity Commissioner recommended on page 71 of the 2020 report:

... deferral of payment can provide significant benefit and allow more development projects to commence.

I would note that the Productivity Commission is an arm of NSW Treasury. If NSW Treasury, through the Government, put up a certain bill, it's almost beyond expectation or reasonableness to expect that the Productivity Commissioner wouldn't say anything other than what's being presented before the House is a sensible proposal. That's just a reality. I simply refer to the quote from his independent report of 2020:

... deferral of payment can provide significant benefit and allow more development projects to commence.

We all acknowledge that we have a housing supply, affordability and rent price crisis. More supply will assist in that regard. Taking on the Productivity Commission's recommendation, as I just stated, precisely delivers in that way.

The Hon. PETER PRIMROSE: Do you think that statement in 2020 reflected the views of the then Government?

TOM FORREST: Yes. I do.

The Hon. PETER PRIMROSE: So the Productivity Commissioner, you suggest, was responding to the views of the then Government?

TOM FORREST: No. It went through a full process of review, which took over a year, with all of us being consulted—

STEVE MANN: Almost two.

TOM FORREST: —as well as local government.

The Hon. PETER PRIMROSE: All of you were involved?

STEVE MANN: Yes.

TOM FORREST: We all made submissions to the Productivity Commission.

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The Hon. PETER PRIMROSE: Were there panels or anything at that time?

TOM FORREST: All of local government was significantly involved and then there was an extensive process of public consultation associated with the development.

The Hon. PETER PRIMROSE: But you were all involved in the panels?

TOM FORREST: Not panels. We were simply consulted. When he published a draft, we were consulted on the draft. He published a final, we were consulted on the final. It was something we had input into, in the same way that councils and Local Government NSW did. All of the relevant players had an opportunity to contribute to the Productivity Commissioner's review of infrastructure contributions. We all had some misgivings about the recommendations, quite frankly. We weren't delighted about any recommendation that increased fees and charges but we accepted that, taken as a package, it was something that we were broadly able to support.

We had some concerns, which is why it was deferred to committee. We think it was rushed in a little bit with respect to the former Premier, who was then the Treasurer. He sort of snuck it in as an adjunct to the budget, and that caused some consternation and concern. Frankly, as a result of the work that the department did with us in the subsequent year or more, we got to a position where broadly we could accept where things were going because there were wins and losses on all sides. Regarding what was mentioned earlier, we were a little bit concerned about the splitting up of it, in particular the idea that we might bring forward the RIC component, which is now called the housing and productivity contribution, without the counterbalancing part of that, which was the deferral of the payment from CC to OC.

STEVE MANN: That's why we've raised the developer services plan, which is the water charges. That should be before this Committee. That's up to \$46,000 in the outer areas—massively more than we had expected and we think more than the Productivity Commissioner had expected—straight onto the cost of housing at the wrong time.

TOM FORREST: It's not part of this bill, though.

The Hon. SCOTT FARLOW: I will pick up on this occupation certificate-construction certificate issue. When you outline the interest rate charges you're facing at the moment, you see the challenges that there would be. Universally, every council has told us no. Every council has come in here and said—I think Local Government NSW said, "If the State Government decides to do it with its charge under 7.24, fine, but don't touch 7.11 and 7.12." I think it was suggested previously that that could potentially be something that people would be amenable to. What would be your view if there were some splitting that occurred in terms of this housing productivity contribution charge being levied at the occupation certificate stage while local government levies were preserved under 7.11 and 7.12?

TOM FORREST: If you just did it for 7.24, which can be done administratively anyway, I think there's nothing to stop the Government, under the current legislation, from taking the 7.24 charges, which are the housing productivity contribution charges being levied at OC. That's a decision administratively that the department could take. What the Productivity Commission specifically recommended was 7.11 and 7.12, because there was no legislation at that time relating to 7.24 charges. That's the input that this legislation brings on board.

The Hon. SCOTT FARLOW: To the point of the Productivity Commissioner's submission, it's silent on this matter; it doesn't say anything on it. And we've only just received it.

TOM FORREST: Our very strong preference for administrative efficiency is that the three be done together—point one. Our second point is that maintaining the fees and charges, which are of substantial number—recently, the 7.12 contributions, that payment scheme, for Liverpool was determined by IPART at 4.5 per cent of construction value. For Penrith, 5.5 per cent of construction value. For the last 25 years the total amount for section 7.12, or the equivalent under previous legislative arrangements, was capped at 1 per cent. So you're now taking 4.5 per cent of construction value and 5.5 per cent of construction value. Having those sorts of charges levied just before the start of construction at a time when you've got a housing supply crisis seems to be like a tax on the delivery of the very thing you're trying to fix. I just don't get it.

The Hon. MARK BUTTIGIEG: To clarify, the general proposition is not the quantum, the broad-based nature and the reallocation of the money; it's more the timing because you'd accept generally—having just been through an election campaign in areas like Leppington and Camden, I saw the firsthand the deficit of infrastructure and the effect that that had on families out there. You would accept that we've got to do something about that, otherwise you have this situation where people are moving out there and, for a whole generation, they've got no transport, no schools and no hospitals. Would that be a general summary of the position? The issue is not the increased charges or the broad-based nature, it's the timing.

TOM FORREST: Mr Buttigieg, you've accurately reflected the Urban Taskforce's position.

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ROSS GROVE: Just on that—I did a quick check to make sure—when I was researching this matter two years ago as part of the previous reforms, it became quite apparent that local councils, when putting together their 7.11 plans and other plans, did not necessarily have consistent wording on their approach and their policy with respect to the payment due date for their contributions. Some would make no provision for deferred contributions, others would. The interesting part about quickly surveying those contribution plans is that, on the surface, it would appear that there was no correlation between the preparation of that policy and the overall financial health of each individual council. There were quite affluent councils that were very absolute. There were certainly less cashed-up councils that were a lot more flexible.

There is certainly a lack of consistency there. I might be open to providing a bit of that information to the Committee separately because I think there is a bit more wriggle room. Obviously the local government sector needs to advocate in its absolute best interest, but this is effectively a tax on the start of new construction. Whether it's a local tax on the start of new construction or a State tax on the commencement of new construction, it is an obstacle to a construction industry which is feeling pressures from multiple quarters. It would be a significant move in the right direction to defer those payments until OC stage.

The CHAIR: Do you think it's genuinely fair to consider it a tax when it is in fact a contribution? From what the Committee has heard so far, I don't think there is remotely any advocacy of local government in and of itself; it is literally an advocacy on behalf of the communities that it's hearing from every single day. One of the things that we have heard very clearly is this notion that the reason the timely collection of the contribution is so important is related inextricably to the growth capacity of a community based on social licence. They're very important factors that we need as a whole of the component parts, participants and actors in the delivery of this important need—housing. We must remember who we're delivering houses for. We're not in a widget factory. This is really about those communities that are in need of housing and the social licence aspect. That is what I was hearing, and I think what the Committee was hearing, was the loudest drive for advocating for the earlier delivery of those contributions and that is so the infrastructure can complement it. That's the very glue that holds the social licence for growth together. I would have thought that is in your constituents' very best interest.

STEVE MANN: That's very well said. I would absolutely support that. Often, the developer delivers all of that. In a voluntary planning agreement, the larger developers are delivering all of the community—sometimes the schools. What we're really talking about here is coordination and integration. Focus on that \$3.2 billion. There is \$3.2 billion paid by mums and dads in buying their homes that isn't moving. Let's get that money moving. It's difficult, but it can be moving more quickly. AIF is one of those opportunities that is getting the money moved more quickly. And then let's knuckle down on ensuring the integration is focused on. This urban development program that is promised in the bill is a very good initiative. That needs to go into Cabinet.

You can receive from regional panels of developers, governments and State agencies the prioritisation of infrastructure needed. You need to go back to them and say, "These are our decisions. Get on with it." Then get works in kind changed in New South Wales so it is about moving more quickly and government not delivering this. It can be delivered by industry if the credit trading system is put in place rather than "impactor pays", which says, "Pay everything to get that house on the ground, even if it's not your responsibility, and maybe one day we'll give you your money back."

TOM FORREST: Again, I agree with my colleague. You completely nailed the crux of the issue, but there's a bit of a nuance which causes us to push back a little bit. Mr Mann referred to the \$3.2 billion of unspent collected finances. There used to be the nexus provision that strictly meant that you could only spend the money on a project that was directly related in some way to the development. That used to stop councils being able to spend it because they would collect the money from each of the developers but they wouldn't be able to build the infrastructure until such time as they had enough development contributions to be able to build the new infrastructure that was being funded through those contributions. They got rid of that and they said, "Now you can pool the funds and spend them anywhere within your local government area when it comes to local government contributions section 7.11 and 7.12." Even with that pooling arrangement, you've still got \$3.2 billion of unspent money. There may be some smaller councils that will have a difficulty associated with the deferral—

The Hon. MARK BUTTIGIEG: I was going to say, that's an aggregation.

TOM FORREST: I know. I would say, if you're looking at garnering something between \$700 million to \$1 billion a year out of this new fund that's being levied on all developments, there may be an opportunity to assist councils with the deferral cost from CC to OC. Most councils will be okay, because they have got a large amount of unspent money that they can dip into to pay for the infrastructure. I completely agree. Developers are the ones who often get blamed for building buildings and developments without the local infrastructure being put in place. We are the ones who often cop it because people don't think that it's because council hasn't been able to get the infrastructure delivered. We're the ones who get blamed for it, and it actually works against housing supply

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and against all of our interests. But I would say that, in this case, let's start by spending the \$3.2 billion. If you've still got an issue associated with the deferral, which I don't think you have, then there are opportunities with the new money that is being raised to assist those councils that put their hand up and say, "We've got a problem."

The Hon. JACQUI MUNRO: I have two questions. The first one is around borrowing. I completely understand what you've said, Mr Forrest. You were very clear in your opening remarks about the difference between CC and OC. I'm wondering if you have done any calculations on what the cost of interest on the borrowing is over those, say, three years of repayments. I think you said 15 per cent, perhaps. Is there any figure that you can put forward that might reflect that additional difference in cost?

TOM FORREST: I would have to take the question on notice. My colleague, Steve Mann, is a valuer and does these sorts of things every day. If we get our heads together, we'll be able to come up with an answer and a couple of scenarios. The three of us together will come back to you, if that's acceptable.

The Hon. JACQUI MUNRO: Of course. Thank you. My second question was around the risks to competition between the States. In the submissions from the Urban Taskforce, the Property Council and the Urban Development Institute of Australia, comments were made about New South Wales currently having some of the highest fees and charges associated with development. What is the current situation nationally? What is the risk of losing development to other States?

STEVE MANN: It's a great question. The first way to attack it is why is it more expensive? There's one reason, and that's land. Our land is more expensive. There's no reason why anything else should be more expensive. It's also very interesting to think more deeply that we are the one State that relies very strongly on apartments. That's what's drastically missing. As I said, it's down from a peak of 33,000 apartments to around about 10,000 under construction at the moment. The position being put forward is that it's much cheaper to do infrastructure for apartments. How come the other States can do it when they're doing greenfield? We must do delivery across the board. At the moment, taxes and charges equate to around about \$200,000 on a home—all the taxes and charges from local, State and Commonwealth. As we said, in and around this particular bill—not just this bill but DSPs et cetera—that's another \$100,000 right when we're in a crisis. The timing is wrong. That is about 25 per cent of the cost. Interestingly, it was 30 per cent a little while ago, but that's because construction costs have gone up so much.

The Hon. JOHN RUDDICK: Tom, thank you for explaining that there will be mezzanine finance for many developers if they have to pay the fee up-front. You said it could go for two or three years and it could be 15 per cent. There will, of course, be some developers—the very big developers—who can finance it up-front. Am I correct in thinking that if this provision is enacted, this could be the straw that breaks the camel's back of the smaller developers, the ones that, in your report, you said were facing record levels of builders collapsing?

TOM FORREST: Yes. There are very few developers that actually have massive amounts of cash in the bank that can fund it up-front. To the extent that there are some, your question is well framed and correctly put. I would agree with the conclusions that you've drawn. It would put massive pressure on the smaller developers and those that are looking to build up a business and a new opportunity employing people to build new homes, at a time when investor loans on property are down and construction insolvencies are rising. From ASIC reports, they're saying five insolvencies a day so far this year. Most of those are builders—they're construction companies. Those that are surviving are being supported by the developers. That is to say, developer margins are getting eaten away to the point that they're actually making losses on construction, but they want to keep their teams going because once they go, it's very hard to get them back. So developers are already incredibly tight.

That's why I think collectively we say now is not the time to be putting what effectively is a charge—you're right, Chair, it's not a tax; it's a charge. It's a contribution to the delivery of infrastructure. I said in my opening statement that, broadly speaking, we support the charge and we support the need to grow a box of carrots to support local councils delivering to their community infrastructure that supports housing supply, which we all know is needed because we know immigrants are coming into our country—also much needed for the growth of taxation revenue and the support of our economy. If you accept all of that, then we say simply move it to OC rather than CC, and if the logic applies to one—that is 7.24 charges—it also applies to 7.11 and 7.12 charges. Administratively, it's better to do it in one go.

The Hon. JOHN RUDDICK: We've got these record numbers of builders collapsing. You said there's five a day. We keep seeing headlines in the papers about how these big developers are crashing. What's causing it? Is it principally rising interest rates? Is it inflation? Is it not getting materials, or red tape?

TOM FORREST: It's a perfect storm of a whole bunch of things that are happening all at once. Ideally, during the COVID period we would have been racking and stacking housing approvals on the shelf so that when the COVID period opened up and we were able to get back going with things, we would have been able to get in

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there with alacrity, fully knowing that the students would be coming back and that the immigrants would be coming back. We knew that that was going to happen. The former Federal Government—Alex Hawke—talked about increased immigration numbers even 1½ years before the last Federal election. We knew that the numbers were going to be coming back. The Chinese Government insisted that Chinese students return to face-to-face teaching or their qualifications would not be recognised by the Chinese Government, and this caused a sudden boom of Chinese students to come back into Australia.

All of the business community went down to that job summit commissioned by the new Federal Government, and everyone agreed that we needed to increase immigration but we also needed housing supply. Then, on top of that, you had the Ukraine war, which increased the cost of logistics. It increased the cost of building materials. It increased the cost of fuel. That is still washing through. We all know about the bushfires and the impact on timber. We know about the floods and the associated increase in costs and difficulties associated with getting labour. The experience of COVID has caused what is already an aged cohort of experts in the building and construction sector to simply retire.

The big resignation is a real thing in our sector and that's one of the reasons why we need the migrants to come in and to start filling in from the back end—the consultants, the engineers, the plumbers, the electricians, the people who pour the concrete and fix the concrete. All of those things have caused price increases and the escalation of prices that you've seen. At the same time as that, you've had increases in interest rates, which is threatening settlements and threatening the viability and economic benefits. So you've had a perfect storm of cost pressures, and now is not the time to be adding another one at the point of the start of construction in particular.

The Hon. JOHN RUDDICK: Is this rate of collapse of the developers continuing to get worse? Has it stabilised, or is there light at the end of the tunnel?

STEVE MANN: It's currently been the builders not the developers, and what Tom was saying is that the developers have been keeping the builders alive, and in fact the subcontractors alive as well. There are two answers to that. The next wave of pain in construction—again, CPI went up, so maybe as all of industry is watching, this won't happen, but we hope there will be some slowdown in the double-digit growth of materials cost to build housing. But it is going to be wages growth. It's so tight to get the right staff. That's the expectation, that there will be very high wages growth in the industry. If I might just add to your former question—we did the work for the Building Commissioner. Sixty per cent of housing is delivered by small- and medium-sized developers, so it's only 40 per cent that is the very big developers.

The Hon. SCOTT FARLOW: I just want to turn to the broader concepts from the Productivity Commission's original report. I think the Property Council has classified this as piecemeal reform, in a sense. Tom, I think you were talking about effectively the swings and roundabouts of a broad-based charge like this, but then some sort of reward which is part of the full suite of recommendations from the Productivity Commissioner in 2021. Could I ask you to outline, from your perspective, where we are at in terms of that broad suite of reforms that the Productivity Commissioner recommended, and what you see that needs to be done to be able to make the whole system work when it comes to contributions reform?

TOM FORREST: I think there were 29 recommendations from the original Productivity Commission report. What we've had implemented so far have been all of the ones that add to the fees, costs and charges for the development community, and we haven't had any of the quid pro quo benefits: improvements in efficiency, improvements in coordination, improvements in delivery of infrastructure, and most importantly—as I've outlined, the one thing that was really a bit of a saving grace out of it all for us—a deferral of all of the contributions from CC to OC. I think I've talked about that enough, but it's an important thing.

Mr Farlow, this was something that was kind of snuck in during the midyear review by former Treasurer Kean. Effectively it was put in there and what it actually delivered was a budget surplus for the former Government in the third year going forward. I put out a press release which didn't get a lot of traction because it was February going into a March election, and people were talking about whatever the issue of the day is; that's life. But I said this is effectively a new tax on property construction just to deliver a surplus in the third year. I understand that deferring from CC to OC actually threatens to a certain extent that surplus, but I think it's a false surplus. The reason I think it's a false surplus is because I think there's a very real fear that you won't get that construction—that that construction will actually stop.

So the revenue team at Treasury have done their numbers on the basis of "we'll put in a new tax and just assume the same amount of construction that we've previously anticipated will deliver us the result". In fact, I don't think that that will happen. Because of the issues I was raising before, I think this could be the straw that breaks the camel's back and simply causes banks to say, "Hey, pause there. We've had another look at the whole feasibility of this loan arrangement, and actually we're not going to fund you for construction. We're not going to go forward

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with allowing you to proceed with this development; we'll wait until the market is better placed and some of those other inflationary factors have eased off."

The imposition of a new tax can make that big a difference. Why? Because it's a new arrangement that forces you to go back to the bank and re-present your feasibility analysis. It's up to them as to whether they want to go forward or not. What we're concerned about is that imposition of that new tax at that point in time in particular. More broadly speaking though, we accept that there's a case for there to be a broad-based tax for the provision of new infrastructure and we accept that we're a part of that. We just want to see the ledger of pros and cons that the Productivity Commissioner considered balanced up at this stage.

The CHAIR: We went back to calling it a tax. I thought we decided it wasn't a tax.

The Hon. ANTHONY D'ADAM: Mr Forrest, you paint a picture of an industry on a knife edge. Earlier in your contribution you talked about the 21,000 gap in terms of the housing supply need versus what the industry is currently projected to actually contribute towards housing supply. It seems like you're painting a picture that the private market is actually failing—that the private sector can't deliver what society actually needs in terms of housing supply. Is it your submission that perhaps we need a greater involvement of the public sector in terms of delivering housing supply and that the private sector has to accept that it's just not up to the task?

TOM FORREST: You're sounding like some of your Federal colleagues from The Greens party in some respects, Mr D'Adam. I would say that one of the constraints we faced over the last few years has been not in the private sector's availability of capital or willingness to build, but in the difficulty of getting approvals through the planning system. In fact, for the last four years we've seen those approvals drop off. Notwithstanding maintaining the number of applications, the number of approvals has dropped right off and, as my colleague Mr Mann stated, the area where it's dropped off the most has been in apartments. The Minns Government has very clearly said that they want to focus on taking advantage of infrastructure investments to build up height and density in locations that have benefited from those. We welcome that change of approach because that will be one of the things that contributes to getting those numbers back up.

We had a failure in the planning system effectively and the politics surrounding the planning system that led to a drop-off in approval numbers, notwithstanding the applications and the willingness of capital to come forward. Now, though, things have changed. You've still got that problem—approvals are still at a record low—but now you've got people thinking, "Do I really want to make an application for a building, or shall I invest in shares or some other investment opportunity instead?" So you've got capital—the banks and investors—actually withdrawing their finances from particularly the New South Wales market and looking at other opportunities.

Part of that, as Mr Mann outlined, is because of the cost of the purchase of land associated with the Greater Sydney market in particular. I would also note that you've got real constraints on housing supply—and this comes back to the planning system, not the willingness of capital to invest—right across regional New South Wales. We have record shortages and rental vacancies in places like Nowra, Tamworth, Dubbo, Parkes and Wagga Wagga, and right across regional New South Wales. This is a problem in Sydney but actually it's an even bigger problem in the bush.

STEVE MANN: Can I add something? I think it's a great question, and I think you have to answer it at all the multiple layers. We're all using the same bunch of builders; it doesn't matter if it's Government or private industry. We've got to keep the builders alive. We have to be very focused on the big challenges that they've been through and a really struggling construction model at the moment in Australia, not just in New South Wales. How is New South Wales going to win? It is going to win because it brings things together; it doesn't pull things apart. Affordable housing and market housing—they should be done together. The Government, yes, should be doing work on their front where they can. But we shouldn't have this clash and pulling apart of our housing. We want to deliver across the continuum. It just has to be feasible.

ROSS GROVE: A general observation, and it speaks to—we obviously had the "this is good in the bigger picture of reform". I think what we're looking at here is a reasonable measure but as part of a half-pregnant reform. We're very concerned that we're seeing all the revenue measures delivered, and in many ways if industry has a choice between servicing a loan on a holding cost or investing in government infrastructure that ultimately, yes, supports the ecosystem around it, I think industry would prefer that that money go into the bucket of contributions.

But it is getting that governance arrangement right so it is not absorbing those holding costs so that it can look at investing in that infrastructure. To Mr Farlow's point around how far are we into it, as I said, a lot of the revenue measures have been done. This has been picked up. I note the previous Planning Minister effectively abandoned the reform agenda, but it was already half introduced. The local government rates reform that allows

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local government to better benefit—it is not perfect and it's being fixed up by IPART at the moment, but that mechanism was delivered.

This bill is before us. We need to get those governance mechanisms right so that—as I said earlier, this system will move as fast as its slowest moving piece. That goes to delivering the whole package. There are other measures in this package which are also quite good for local government and also just introduce a bit of sanity and easy governance—no longer going through the constant paperwork shuffle and actually collecting money and getting stuff done. I think it really does come to completing the entirety of those items. Some of those items would include the imposition of the essential works list and a more flexible 7.12 mechanism, which would lead to higher revenue for councils that wanted to go down that path. And, yes, we mentioned recommendation 4.10, one of our favourites—deferral of payment. But it is very much delivering that holistic package because if we don't deliver it all—even with respect to the water charges—if we have something which is slow and inefficient, industry is going to be paying through the nose. Then we're going to see an additional element introduced to the financial environment, the cost-of-material environment, the wage environment that's just another burden on the industry.

STEVE MANN: Peter Achterstraat picked our industry as one of the first opportunities for productivity gains across the whole economy of New South Wales. He did it because of this disaggregation across getting infrastructure and housing on the ground. Hence the comments of my peers around not pulling it apart and ensuring the whole thing delivers productivity; it is crucially important.

The CHAIR: There was something taken on notice, so the Committee has resolved, with the very short time frame, if we could please have everything returned—

The Hon. SCOTT FARLOW: Can I put that part on detailed analysis on notice as well? Can something be provided to us before Tuesday?

MICHAEL PLAYER: On the status of those reforms?

The Hon. SCOTT FARLOW: Yes.

MICHAEL PLAYER: We can certainly provide that.

The CHAIR: We're asking for all of that by close of business on Tuesday. You can provide any clarification to evidence within 24 hours of receiving the transcript. We're very grateful for your contribution today and your submissions. We recognise the incredibly short period of time, so we're extra grateful for your time and your evidence.

(The witnesses withdrew.)

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Ms GERALDINE CARTER, Acting Executive Director, Markets and Regulation, NSW Treasury, sworn and examined

Mr MICHAEL GADIEL, Executive Director, Centre for Economic Evidence, NSW Treasury, sworn and examined

Mr MATT GREISS, Director, Planning, Industry and Environment, NSW Treasury, affirmed and examined

Ms CASS WILKINSON, Executive Director, Transport, Infrastructure, Investment, Planning and Regions, NSW Treasury, sworn and examined

The CHAIR: I welcome our next witnesses. Does anyone want to give an opening statement?

MICHAEL GADIEL: Yes, that falls to me. Firstly, my colleagues and I pay our respects to Gadigal Elders upon whose ancestral lands we are giving evidence today. Population growth in New South Wales has picked up. It is around 1.8 per cent, annualised in the most recent data—well above the average annual rate of 1.1 per cent, of course, off the back of slow and negative growth through the COVID lockdown period. That's seen the housing market significantly tighten and supply pressures come to bear. Moreover, we've seen a recent turnaround in house price growth, which is very rare in an environment of rising interest rates. This suggests that the dominant force affecting the housing market right now is the balance of supply and demand rather than borrowing capacity of households. This points to a shift in the market from either balance or oversupply during the lockdown, to undersupply.

As part of this, then, this particular bill addresses the supply side of housing, noting that to develop new housing, the supporting infrastructure is necessary. Stakeholders in our PC review, conducted by Treasury and the Productivity Commission, noted that the existing system of special infrastructure contributions is narrow, ad hoc, unpredictable and stop-start, resulting in an inconsistent patchwork of charges that raised insufficient revenue to meet the infrastructure requirements of a growing city or regions. A reformed system would address this by applying a more modest contribution over a broader base of development, both resulting in a lower impost on individual developments but, at the same time, raising more for the State to spend on growth-enabling infrastructure and recognising that both infill and greenfield developments place pressure on the infrastructure of their surrounding communities.

Timely delivery of growth-enabling infrastructure is therefore essential to ensure we can absorb the population growth that we need to supply the skills to an economy driven by an aging population. The maintenance of community confidence in the capacity of the planning system and, more broadly, the Government to manage growth is therefore critical. Reforming State infrastructure contributions has large economic benefits by enabling infrastructure to better support housing development. Independent modelling by the Centre for International Economics for the PC review found the net benefits of this measure, largely related to the contributions part of the package, were in the order of \$12 billion.

Much of this can be attributed to change in the State infrastructure contributions. These benefits arise from more infrastructure to support development including housing supply, improved incentives for local government and communities to support growth, and lower compliance costs for business. Treasury administration of SIC funds via the Special Deposits Account, partnering with Planning, will support better alignment of the distribution of these funds to agencies as part of the budget process and address challenges in influencing agencies to focus their capital budgets on the growth needs of the regions and the city. Better alignment with the budget process will allow HAF funds to leverage the whole infrastructure budget more effectively.

GERALDINE CARTER: We were on the team that provided the analysis for Peter Achterstraat, the Productivity Commissioner, which is why I'm here today.

The Hon. SCOTT FARLOW: Thank you all for being here and being available today. The question I just put on notice to the Property Council—at the end, I might ask up-front to Treasury, as well, and I don't expect you to have an answer here today—is could we be provided with a report card in terms of the implementation of the Productivity Commissioner's report recommendations, if that's possible? I don't know, Ms Carter, if that's something you could take on board. One of the things that has been raised—funnily enough—by local council, has been around feasibility on development projects and the modelling that was provided. Is that something that you could talk us through? I think there have been requests—and I think City of Sydney Council may have led them as well—in terms of that modelling being made public. Is that something Treasury would countenance?

GERALDINE CARTER: When the Productivity Commissioner undertook his review, there was a feasibility analysis undertaken in terms of the package of the recommendations that he put forward to government.

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That modelling was undertaken by the Centre for International Economics and is on the Productivity Commission's website.

The Hon. SCOTT FARLOW: That was modelling that was undertaken in 2020, was it?

GERALDINE CARTER: Yes. It would have been during the review. I would expect that the feasibility analysis that was undertaken then would still hold, in that it—basically, the developers and the sector had become aware of these charges, so they have had time, in terms of their planning and their projects, to adjust the price that they paid for the land for the development. And, as the report showed, in the past, the developers' main criticism of the current infrastructure system was the fact that there was no certainty. We had a system where we had a patchwork quilt of different SICs and they were pretty limited. In some areas, they were very high. We had SICs that were implemented but we often had SICs that were exhibited and then they did not go any further.

There was a bit of a stop-start in terms of development, exhibition and implementation. And the submissions that were made to the PC at the time were that the lack of certainty was inhibiting their ability to be a developer, to run feasibility analysis for their projects and to actually understand what the total cost would be to their projects. In terms of the feasibility analysis that the PC did at the time, it was found the charges with the development were still feasible. There has obviously been 2½ years since and government has accepted the recommendation. So there has been that economic signal in terms of the charge and the quantum that developers need to be able to adjust their developments and their planning processes.

The Hon. SCOTT FARLOW: Since that time interest rates have risen by 400 basis points. At that time the RBA also said that interest rates wouldn't rise until 2024. Since that time construction costs in Sydney have grown by 30 per cent, and there has been no updated modelling done before this introduction.

GERALDINE CARTER: Yes, the macro-economic circumstances have changed, but you don't want to conflate changes in the macro-economic conditions with the feasibility of the charges.

The Hon. SCOTT FARLOW: But this isn't just macro-economic changes; these are the charges that the industry is dealing with at present. This is not some esoteric concept; this is actually what builders and developers are paying in the market.

GERALDINE CARTER: But when developers understand what the price is that they receive in the market and they work out what their costs are, in terms of the infrastructure component, they've now known that the Government has flagged their intention to accept the commissioner's recommendations. They know what the quantum of the charge is and that when they go and purchase land for that development, essentially, they lower the price to the landowners to take into account that charge. So, the thing is, if a development becomes unfeasible, it's not because of these infrastructure contribution charges; it's because, at the margin, that development is unfeasible.

MICHAEL GADIEL: We are seeing a marked decline, or downward trend, in housing approvals in the data. I would attribute that to the factors that you've pointed to in terms of rising interest rates and rising construction costs as well as capacity issues in the construction sector more broadly. But I would suggest that there is an opportunity here for these charges to come in because, while we are seeing declines in land values over the past 12 months, we are now starting to see house prices grow again.

This policy would need to see the margin between the cost of land and the cost of the sale price of the dwelling increase and, with the market dynamics now—with land prices down on where they were several years ago but house prices rising—I think there's an opportunity for developers to retain their margins in some circumstances. But, certainly, as you say, we can't get around the fact that the macro-economic conditions are not as favourable in the current environment. Of course, it would depend on the borrowing arrangements of the individual developers. We know that some are self-funding and don't borrow. Others will borrow at a fixed rate and may have done so several years ago and therefore not be exposed to those changes, and others, as you say, will be highly exposed to the current situation.

The Hon. MARK BUTTIGIEG: On that point, does Treasury have any stats on the proportion of the industry that is self-funding?

MICHAEL GADIEL: I don't have them to hand. We can take it on notice and see if we can provide an answer but it's not with us today.

The Hon. MARK BUTTIGIEG: Because there was a view from previous evidence that the overwhelming majority relied on finance. It would be good to know exactly what Treasury's view is on that.

MICHAEL GADIEL: We are aware that certain developers do self-fund but what share they are of the market at any particular time isn't something we have available to us now.

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The Hon. SCOTT FARLOW: And you haven't taken that into account in the modelling or the like, in terms of interest rate charges that would be worked into that model and in terms of the amount that would be self-funding? I guess there's always an opportunity cost in terms of that money anyway, so it would be assessed.

MICHAEL GADIEL: The modelling was done as the part of the review and that's what we're relying on. The conditions have changed but in order for these not to impact strongly on feasibility, we'd need to see, as we say, a widening of the margin between the value of land and the value of dwellings. Given the dynamics in the market, it's not the worst time. The other broader point to make is that areas that are subject to a SIC charge will transition to this lower charge, so it will actually relieve the burden on developers in some cases as well as result in an increase in costs in other cases, so it's not a single story.

The Hon. SCOTT FARLOW: One of the other concerns that's come out today has been—and this comes both from advocates such as the Total Environment Centre as well as the developers themselves or local Government—that it's unknown in a sense as to what the transport project component may be on developments and what the strategic biodiversity component will be. Have you got any insights that you can provide with respect to those changes?

MICHAEL GADIEL: Yes, we can provide some answers on that. I defer to Cassandra Wilkinson on the transport charges.

CASS WILKINSON: The simplest first answer is the reason it's not part of the fixed arrangements is because, as you'd appreciate, transport projects are more variable than, say, a school. The cost of a new school tends to be the same as the cost of the last school you just built, whereas the cost of railway projects varies wildly from light rail, rapid bus or any other option. We don't think that it would be useful to try to predict a general annual rate of growth for transport costs. They will be project by project, dependent on the region.

But what we would say is that same sense of proportionality affects the benefits, so the beneficiaries of a new metro station at Pyrmont will see improvements in their asset value as well as their quality of life and their shortened journey times to places either of work, education or other services. From our point of view the key obstacle that we hear from the community and industry all the time to housing supply tends to be infrastructure and it tends to be, critically, transport infrastructure. The proportion of homes you can provide depends very much on the scale of transport infrastructure that is provided. So there's proportionality built into the way we approach this additional charge.

The Hon. SCOTT FARLOW: I think we had some discussions with the Planning Institute around this and how it's applied. Pyrmont was the example and it was a percentage of development. Would you be envisaging putting it in as a percentage of the development cost or would it be on a per dwelling basis, such as the housing and productivity contribution? What's the thinking around that?

CASS WILKINSON: At this stage none of us can speak for decisions of Cabinet in future. Those options might be considered but we probably can't, and shouldn't, speculate.

The Hon. SCOTT FARLOW: With respect to the strategic biodiversity charges, how are you looking at formulating those?

MATT GREISS: I can give you a quick summary of the intention of those charges. The Biodiversity Conservation Act establishes a broad regulatory framework requiring developers proposing development that will impact native flora and fauna to offset those biodiversity impacts. Under the existing Planning Act the Minister has broad powers to impose special infrastructure contributions to recover costs incurred by the State, conserving and enhancing the natural environment in relation to strategic biodiversity offset plans established under that Act. The bill seeks to repeal those existing powers. Ultimately the purpose of the strategic biodiversity component is to maintain them so that the State can intervene in a strategic way to deliver offsets: Where there's large-scale development happening and there are economies of scale or other benefits, including environmental benefits for the State, rather than requiring individual developers to obtain approvals and equip offset obligations, to do that on developers' behalf and instead charge a development charge.

At this stage, as part of the reforms, we aren't proposing any specific strategic biodiversity component charges. But the types of areas where we may seek to do so in the future are, for example, the Cumberland Plain, where there is a draft Cumberland Plain Conservation Plan currently being considered by the Federal Environment Minister. In that area, if that plan was approved, these powers would allow the State to instead take on those obligations to offset the environmental impacts of development in Western Sydney and we would be able to charge developers the cost of doing so.

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The Hon. SCOTT FARLOW: In terms of the time line, this is to be enacted by 1 October that this charge is to come into place. In terms of the strategic biodiversity component and the transport project component, are there any time lines as to when they will be enacted?

CASS WILKINSON: We don't have a time line at the moment. That would be a matter for the Minister to determine.

The CHAIR: On the biodiversity component, I understand that we see it as a sort of machinery component, but do we also think that it is not particularly timely given the reviews that are happening of both the Federal law and the State biodiversity laws—I think the signals are that there may be some fairly comprehensive changes around that—and whether we think there might be prudence around having an early review of this function under the new provisions?

CASS WILKINSON: I think, as a general comment before I make more specific comments, policy is always evolving. This is, as you say, particularly complex policy. But broadly speaking we think that it's always important to price things that we value. We might adjust those prices or change the way we calculate them but we think it's important to value biodiversity and have that locked into the way that we understand the pros and cons of developing both individual blocks and Sydney as a full spatial question in terms of the growth of the whole Sydney region. We would say you are correct inasmuch as things may need to change but we would rather begin from the principle that there is a price to be paid, with further detail to follow.

MATT GREISS: I certainly agree with that. Ultimately I think it's important that the existing power be replaced so the State can continue to charge developers for any harm that they cause to the environment where an approved strategic biodiversity plan is in place. As you say, an independent statutory view of the Biodiversity Conservation Act is currently underway. That's examining whether the objectives of that Act are being achieved, whether they remain valid and whether the terms remain appropriate for securing the objectives of the Act. That review, as I think you know, is being led by Dr Ken Henry and supported by a panel of experts.

The Government will not be obligated to use the strategic biodiversity component powers proposed in the bill if it chooses not to progress with either strategic biodiversity offset plans in the future, including the Cumberland Plain Conservation Plan, or if the statutory review of the Act currently underway recommends changes to the scheme that make strategic biodiversity offset plans no longer required. So nothing in the bill impacts on the current operation of the scheme but, equally, if the review makes recommendations that have implications for the provisions in this bill or the scheme and its operation in general, I'd expect as part of the Government response those could be addressed. The existing bill seeks to simply maintain the existing powers. We think that that's a sensible approach while waiting for the outcomes of the review.

The CHAIR: We heard earlier that it would be good if this fund never has any money in it because then it means that we never actually destroyed biodiversity in order to develop. One of the things that was brought to our attention was that there was a provision related to certification and its relationship with the EPBC Act and there's a line in there about a plan, policy, program or something to the effect. There was a question about whether there has been real consideration about what that means for biodiversity loss in a particular district or region and if we could end up seeing money in this particular fund, which is collected from the destruction of biodiversity—habitat—pay for the development of a plan, and whether that is something that we think is a satisfactory outcome or a consequence of this provision and this fund?

CASS WILKINSON: We would stress that we always support the principle that offsets are a last resort, that avoiding damage is preferable to offsetting damage. So, to that extent, I have some sympathy for that earlier comment that was made. When damage is unavoidable, though, planning your remedy before delivering it we would consider a reasonable part of the cost—but certainly something that should sit within a much more comprehensive plan of how to expend the money. I don't know if you have any more detailed thoughts on that.

MATT GREISS: The only additional thought that I will share is that, ultimately, this bill is seeking to ensure that the Government has the power to pass on the actual costs of environmental damage where a development is going to impact native flora and fauna or its habitat. Those costs actually serve as a useful price signal to also disincentivise that activity. So, again, nothing in this bill takes away or adds to the scheme ultimately in place under the Biodiversity Conservation Act. I appreciate there has been lots of public commentary about the efficacy of the scheme. Those issues are currently being looked at by Dr Ken Henry and, again, the bill will not preclude the Government having the flexibility to respond to the recommendations of that review, however it sees fit, ultimately.

The CHAIR: A couple of final things on this—we heard from both the conservation sector and the development sector that the costs of certification are not as understood as the offset sector, and how do we guarantee we are heading in the right direction. I suppose the answer to that will be, "That's a matter for the other

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scheme and for the review." But then this is the ultimate repository of that, so is this ultimately a place that could have some more safeguards around it? I think that was precisely one of the questions or points from those operating in the conservation sector, who were saying, "Well, if this is a fund, that is the repository of those costs of biodiversity loss." Should there be more protections around ensuring that money comes in proper as opposed to it just slips in there from a scheme that is highly criticised?

CASS WILKINSON: I think we would say we're broadly in favour of stringent management of public funds, but ultimately the Minister would have to consider your specific suggestion.

The Hon. ANTHONY D'ADAM: Earlier in the proceedings it was put that it might be a perverse irony if the funds that are collected in the SBC Fund were then invested in a way that was harmful for the environment. I note provision 7.31 (8) says that the Minister manages the SBC Fund in accordance with part 6 of the Government Sector Finance Act. Are there any specific protections or provisions in terms of how the funds will be managed to ensure that that situation doesn't occur?

CASS WILKINSON: The investment strategy for the fund is not settled yet. The Treasurer will need to approve that at some point. As you may have noticed, during estimates most years we get questions about the ethical components of the State's investment strategy. We'll be happy to take on notice seeking some further information for you about what's planned. Currently, at the moment, the specific investment strategy hasn't been settled for the fund, so we'll have to get some more information for you.

The CHAIR: Just on that—and I think this was where the inquiry was heading earlier—is there capacity or work being done in Treasury at the moment about those more ethical capacities to invest and the desirability of this kind of specific money that's coming from the destruction of biodiversity being invested ethically?

CASS WILKINSON: Yes, I think we appreciate your interest and concern. The issue of whether or not public funds are invested in tobacco or weapons manufacturing or other controversial investments comes up every estimates, so it is something we are continually thinking about. Getting the balance between those considerations and returns is something that is constant work for Treasury, but that work is undertaken by our assets team and we will get some more detailed advice and come back to the Committee.

The Hon. MARK BUTTIGIEG: I have a quick follow-up question on this general line and then I want to go into the efficacy of the reallocation of the money. Have these charges for the biodiversity piece been directly linked to what's considered to be the negative externality cost to society? I mean, if there is going to be environmental despoliation, is there a value price that's been put on that or has it just been kind of like, "This is what we reckon"?

MATT GREISS: Basically, under section 8.7 of the Biodiversity Conservation Act, the Environment Minister has regulatory responsibility for conferring biodiversity certification in relation to land and may only do so if the Minister is satisfied that the approved conservation measures under the biodiversity certification will adequately address the likely biodiversity impacts of the proposed development. So as part of the regulatory process, the intention of the Biodiversity Conservation Act is to only allow a strategic biodiversity offset plan to proceed if it is, indeed, going to offset the biodiversity impacts that are expected to be caused by that development. The strategic biodiversity component—

The Hon. MARK BUTTIGIEG: So, in a nutshell, I can take this lump of money which was paid by the developer to allow some sort of environmental denudement and put it over here and it nets out. That's the philosophy, isn't it?

MATT GREISS: If a strategic biodiversity plan is approved, the idea would be that the State takes on the obligation to deliver various environmental activity to offset those biodiversity impacts and, in doing so, the State would pass on those costs to the developers undertaking the development, and that would be a one-for-one offset.

The Hon. MARK BUTTIGIEG: If I can put it crudely, based on the evidence we've heard today and what I've heard generally, we had this lumpy system where the charges would get made in certain areas. It wasn't broad-based, it was kind of ad hoc and it wasn't very well targeted or allocated. It goes into a slush fund, for want of a better word, and the taxpayer—or, to put it more realistically, a person out in Leppington or Camden—is wondering why they haven't got infrastructure. How will this configuration improve that allocation in a concrete way?

MICHAEL GADIEL: I'm happy to pick that up. Two things: By being more consistent and more modest in quantum, it will send a clear signal to developers. They will know ahead of time what the costs will be, whereas under the current regime it can be unpredictable and they're subject to State planning agreements, which are private agreements between developers and the State. We would see less of that and much more consistency

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in the way that charges apply. It would raise more funds and so, with those additional funds, it would enable the construction of more infrastructure. It recognises that the catchment areas for State infrastructure are much larger than for local government infrastructure and, to some extent, we're all in the same boat with the city. If the city is functioning well generally then most people in the city are better off. Noting that, the priority for the fund will be that those parts of the city that are experiencing higher growth will be prioritised, as well as that infrastructure identified in the strategic infrastructure planning process.

The Hon. MARK BUTTIGIEG: And that assessment of those priorities will be done under this urban development program, which is funnelling the funds, if you like, based on those growth areas?

MICHAEL GADIEL: It would be projects identified in the strategic planning process—currently the responsibility of the GSC—the State Infrastructure Strategy or those things identified by the Minister, as well as potentially things that are identified in existing SIC plans.

MATT GREISS: It's probably worth clarifying in relation to the strategic biodiversity component that contributions levied on specifically may only be spent offsetting development on that land. There won't be the flexibility, for example, to levy a charge on one part of Sydney and then spend the money on biodiversity measures in another part of Sydney. It must relate to the land that has been subject to the contribution.

MICHAEL GADIEL: Which was a key reason for separating the funds and not mixing the two funds together—having the biodiversity fund distinct from the infrastructure fund. The other final point is, as you say, before the funds were collected by Planning and held by Planning but there were never very much funds available in any one area at one time. It takes quite a long time for those funds to be collected. By the time they are, generally the costs of the delivery of the infrastructure have exceeded the original costings, so there is a consistent pattern of late delivery and underdelivery because of cost escalation. By having a larger catchment, it means that the Government can concentrate its efforts in those areas of high growth at that time. Bringing the administration of the fund into the Treasury with the Planning Minister as a strong stakeholder ensures that the disbursement of the funds can be aligned with the budget process, and those funds can be used to leverage the whole infrastructure budget more broadly towards those areas requiring assistance with growth.

The Hon. MARK BUTTIGIEG: Can I just finish—go on. I do have one more question.

The Hon. JACQUI MUNRO: I have four questions.

The Hon. MARK BUTTIGIEG: Just a quick one.

The Hon. JACQUI MUNRO: Can we extend the time by five or 10 minutes?

The CHAIR: We will go to Ms Munro. Let's keep going for a few minutes and then we will go back to Mr Buttigieg.

The Hon. PETER PRIMROSE: We started late.

The CHAIR: We did start this session a little late. Go for it, Ms Munro.

The Hon. JACQUI MUNRO: Something we've heard from some of the development industry stakeholders was the trouble between the construction certificate and occupation certificate time of payment, essentially. What is the reason for moving the payment time from occupation to construction? One thing that was brought up was that if it is moved that way, at the time of construction they are at peak debt and they will have to pay interest on that additional loan—it was referred to earlier—and then they're essentially paying interest on money that they could have been investing and would have paid back more quickly at the time of the occupation certificate. Have you calculated anything around those costs and what is the reason for moving the payment time back?

MICHAEL GADIEL: Under the current system both State and local infrastructure contributions are levied at construction certificate. This bill proposes no change to that. However, in its 2020 review the NSW Productivity Commission did recommend deferring that payment—both State and local infrastructure contributions—to the occupation certificate stage when developers are at the monetisation stage of their project and therefore less financially constrained, as you say.

A trial of shifting from construction certificate to occupation certificate was tried through the COVID regulatory relaxation period and was broadly successful, although as we have heard today some councils have reported compliance issues. Requiring payment of the housing and productivity contributions and occupation certificate at this stage without also requiring local contributions to be paid at the same time would introduce a range of administrative and compliance risks that we haven't yet fully assessed. Given the scope of this bill is really only limited to the State contributions, the decision has been made to maintain alignment of State and local

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contributions. It would be up to the Government to consider if they want to take up the PC recommendation in the future.

The Hon. JACQUI MUNRO: Related to that, as part of the Productivity Commission's work, has there been any audit done around vacancy of properties that have been constructed but remain unoccupied?

MICHAEL GADIEL: I'm aware that on census night, where generally around 10 per cent of dwellings are unoccupied, a share of those would relate to people who were on holidays at the time, so you're looking at some figure of less than 10 per cent. Obviously then you've got second dwellings; holiday dwellings would make up a share of that too. If there is evidence that owners of properties are holding those properties vacant then it would have to be a fairly small proportion. There has been work done that I'm aware of—not recently—that suggests that if that exists, it's a very small component of the housing market.

The Hon. JACQUI MUNRO: I have two final quick questions. You spoke about the lower compliance cost for businesses through the implementation of this new system. I can understand how that might be true of businesses involved in SICs, but how does that work for other developers who are not subject to those requirements?

MICHAEL GADIEL: Under this proposal all developers would be subject to this where they were constructing additional dwellings. Where an existing dwelling is knocked down and replaced with a new one there wouldn't be a charge because there is no additional burden on the infrastructure. I guess the point I'd make more broadly is that it's a mixed bag. Where there are existing SICs, there will be benefits to the developers in those places, and where there are no SICs then there will be an additional charge, albeit a considerably more modest one than would apply in the SIC areas. Both types of development impose infrastructure costs on the State. Geraldine, did you want to add to that?

GERALDINE CARTER: One thing the PC's report did find was that in areas where there are currently no SICs—you're right in saying that developers in those areas may now be paying a modest charge. But one of the findings the commissioner found was that actually it wasn't great for those communities and even those developers developing in the area. I think they gave the Epping Town Centre in Ryde as an example, where a lot of development was put into those areas and then the social licence wasn't provided. The residents and the community were unhappy because there was a lot of development put in without the infrastructure needed to make it a livable place. Yes, those developers are paying a charge, but it's actually enabling their development going forward so, in a way, there are these benefits to them in the longer term.

MATT GREISS: Can I just jump in on the back of that? It's probably worth clarifying that in the immediate term, perhaps, developers holding land that they wish to develop will experience some of the economic burden of the contribution, but over the medium term it's landholders that will experience the economic burden of the contribution. In many cases, those landholders have experienced windfall gains from having their property rezoned for development. As far as the developer is concerned, they will be willing to pay less for a property to develop if they know they have to pay additional costs of any nature. Ultimately, it's unlikely that developers in the long term will actually wear the economic burden of the contribution. It will be capturing some of that value uplift.

The Hon. JACQUI MUNRO: Finally, the department report that came out in May and the Productivity Commission's 2020 report both referred to \$600 million a year being generated from the fund, but the Minister's speech referred to \$700 million. I was wondering where that \$100 million discrepancy might have come from.

MATT GREISS: At maturity, our current forecasts are that the revenue will be approximately \$700 million per annum. That's in 10 years' time, which is generally the medium-term time horizon for our budget estimates. That's the difference. It's a timing difference.

The Hon. JACQUI MUNRO: Okay.

MICHAEL GADIEL: But that broadly relates to changes in underlying parameters and assumptions underpinning the forecasts.

MATT GREISS: The forecasts will constantly change—

MICHAEL GADIEL: Yes.

MATT GREISS: —subject to economic conditions.

The Hon. JACQUI MUNRO: So that \$700 million is a 10-year forecast at this point?

MATT GREISS: That's right, yes.

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The Hon. SCOTT FARLOW: So what are you booking per annum each financial year in the budget estimates on this new charge?

MATT GREISS: If you give me a moment, I will find that for you.

MICHAEL GADIEL: Matt is the right person to answer this question, but we haven't updated since the PEBU. So at the moment the PEBU profile is the profile for the expected charges.

The Hon. SCOTT FARLOW: But there are changes to that, because that did apply on knockdown rebuilds and that did apply on intensifications with granny flats and the like, didn't it?

MICHAEL GADIEL: I don't think it applied. I'd have to take it on notice, but my understanding is it didn't apply to knockdown rebuilds. But we do have late implementation. So I think the assumption in the PEBU was a September implementation date.

CASS WILKINSON: Really, the PEBU figure had to necessarily make some assumptions about the timing of the bill being passed and whether or not there may be amendments on the way through.

The Hon. SCOTT FARLOW: So essentially there have been no updates since then.

MICHAEL GADIEL: No, there has been no update since then, although we would update it again at budget time.

The Hon. SCOTT FARLOW: If we could have the numbers on that, that would be great, even if you could take them on notice.

CASS WILKINSON: I was going to say, we might take it on notice so as not to hold you up.

The Hon. SCOTT FARLOW: That's fine.

The CHAIR: Mr Buttigieg, did you have something you were going to ask?

The Hon. MARK BUTTIGIEG: It was kind of answered with the CC and OC timing thing, but just quickly, in terms of the effect on housing supply, some of the previous evidence started to indicate that it's a quasi-tax on development and therefore housing supply will be affected. But then the emphasis was very quickly shifted to the timing issue from CC to OC—in other words, "That's not really what we're worried about. We're more worried about the timing." What's Treasury's view on the effect on housing supply?

MICHAEL GADIEL: Our view is that, given the current high levels of demand for housing, the limits are probably not on feasibility at this point. The limits are probably more on availability of serviced land and opportunities for brownfield sites. The modelling that we did several years ago showed that most products that could be brought to market were vastly feasible and that a charge of around this order had very marginal impacts on feasibility, noting the previous points made around the changes in the macro-economic conditions—that they would have an impact on feasibility. But that is the macro-economic conditions; it's not this policy change. It is our view and the view of the independent advisers of the Centre for International Economics that over time this would support housing supply because it would retain that community social licence for housing and it would also enable a more consistent balance of infrastructure provision between infill and greenfields.

The Hon. MARK BUTTIGIEG: Would it be fair to say the timing is not the worst in the world given that we're starting to see an uptick in house prices? You would assume we're somewhere near the peak of the tightening cycle with the RBA and therefore we're probably going to start to head down over the next 12 months.

MICHAEL GADIEL: It is worth noting that there is a phase-in period for this. This policy change is well signalled and there is a phase-in period. So the industry has had time to consider what it means for their projects. Moreover, house prices have turned around and I suspect land values are still relatively where they were at several months ago. So there's an opportunity for that margin between land values and house prices to expand to accommodate this charge where it isn't already. In other places where there is an existing charge that this would replace, they would become even more feasible. That would allow acceleration.

CASS WILKINSON: To step back out of the detail for a moment, Treasury is not interested in this principally to get a few coins. We're principally interested in this because we think it's our job to give government advice to support housing supply. Everywhere we go, every industry person we meet and all the local government people we speak to say that the critical obstacle to housing supply is the provision of infrastructure. And the critical obstacle to providing unlimited infrastructure is clearly choice-making in our financial arrangements. Being able to have a certainty about a contribution—and it is only a contribution. Ultimately, the vast majority of the funding will come from the general taxpayer contribution. But a small contribution to infrastructure will help us to accelerate the supply of housing. That is what this is fundamentally for.

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The Hon. JACQUI MUNRO: Doesn't it essentially defer the provision of housing to banks, who are possibly willing or unwilling to lend to developers to support extra costs over, say, the two to three years difference between the construction certificate and the occupation certificate? If it is just two or three years, what I'm hearing is that it becomes the responsibility of private developers to take on that cost and the interest of borrowing rather than government taking that on, over two to three years.

CASS WILKINSON: With immense respect, I don't think that is what we're saying. I understand the point of view and I've heard it. As Matt said earlier, critically, this is about capturing the increased value of land that is not yet because of the entrepreneurial skills and enterprise of the developer but because of the decisions taken by the State, either on rezoning or the application of infrastructure. So if you happen to be the beneficiary of a freeway, a railway line or a major new hospital, that is added to the value of your land without you borrowing money from anybody or risking any of your own capital. As Michael and Matt have said, there is a little friction in the transition, but generally speaking we're looking at grasping a little bit of the gain that was fundamentally created by government itself rather than imposing additional costs on the supply of housing.

MICHAEL GADIEL: Over time, developers are likely to be the beneficiaries of this policy because it does create an environment where more rapid and timely delivery of infrastructure is possible.

The CHAIR: Can I just ask one thing I didn't get to ask, and I know I'd flagged it outside of this Committee? It is the idea of a concurrence role with the Environment Minister over the biodiversity fund. Is there some rationale or reasoning as to perhaps why that is or isn't a good idea, in terms of the traditional approach to administrative decisions, ministerial responsibility and that point before the spend being a very good check and balance rather than after some form of compliance or regulatory response, which we know is not good for government? Having one Minister telling off another is not a good idea. Having one Minister working with a Minister beforehand is a much better idea, I would have thought.

CASS WILKINSON: I think you're excited to answer this question. You've prepared for it.

MATT GREISS: Yes, I am excited. Ultimately, the bill seeks to maintain the current distinction between the Environmental Minister's role as the regulator and the Planning Minister's role usually as the proponent of strategic biodiversity offset plans. To your point around the Environment Minister influencing the outcome early, the Minister has the ultimate ability to do that as the approver of a strategic biodiversity offset plan and also has ongoing responsibilities and powers to ensure that plans are implemented in the way they were originally intended as part of that process.

Again, we are not proposing any change to that current distinction between the role of either Minister, but on your point around other areas of the planning system where multiple Ministers may be involved in approving aspects of the development through a concurrence power, the distinction that we would make between the strategic biodiversity situation and those other situations is that Ministers with those concurrence functions are usually performing regulatory functions together, whereas the relationship under a strategic biodiversity offset plan between the Planning Minister as the proponent and Environment Minister as the regulator is that the Planning Minister would actually be responsible for delivering on the plan that the Environment Minister has approved, and the Environment Minister would be responsible for ensuring that that has happened as approved.

The nuance and logic of the bill is that that relationship isn't needed in relation to other forms of concurrence in the planning system because everyone is acting as a regulator. With strategic biodiversity offset plans, often the Planning Minister will be the proponent—they don't need to be, but usually that is the case—and therefore the Planning Minister is not acting as a regulator. The Planning Minister is acting essentially as a delivery authority, but the Environment Minister can certainly influence the process by refusing the approval of a plan in advance if the Environment Minister is not satisfied that the plan is going to genuinely offset the biodiversity impacts of the development.

MICHAEL GADIEL: Our colleagues from Planning may have more to say about this.

The CHAIR: All right, thank you. I absolutely hear the logic, but I am still not sure. Anyway, I'm probably obsessing the point. We are over time. You took some questions on notice. Because of the very short time frame, we require everything by close of business Tuesday and, of course, any corrections to the evidence and what appears on the transcript within 24 hours. I thank you very much for your work and your input, and for being here at short notice.

(The witnesses withdrew.)

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The Hon. PAUL SCULLY, Minister for Planning and Public Spaces, before the Committee

Mr JONATHON SCHIPP, Executive Director, Infrastructure Policy, Department of Planning and Environment, affirmed and examined

Mr MARCUS RAY, Deputy Secretary, NSW Planning, Department of Planning and Environment, affirmed and examined

Ms FELICITY GREENWAY, Acting Deputy Secretary, Planning Policy, Department of Planning and Environment, sworn and examined

The CHAIR: I welcome our next witnesses. Minister Scully, I remind you that you do not need to be sworn in, as you've already sworn an oath to your office as a member of Parliament. I invite you to make an opening statement of some sort.

Mr PAUL SCULLY: Thank you for the opportunity to make some brief comments and opening remarks before the Committee. The housing crisis in New South Wales is real, and there is no question about that. We need to build in the order of 314,000 new homes over the coming years to meet demands of population growth and migration, and we are currently finding it difficult to hit that target. Something needs to change and we need to start doing things differently. This bill is a genuine attempt to make sure new homes and jobs are supported by the infrastructure communities need to grow. It provides the critical funding to the State and to local governments to make this happen. It will do so with a sharper focus of the endgame of new housing and productivity, with greater rigour and transparency than attempts by the previous Government in 2021. The current ad hoc arrangements are simply not working.

The bill stems from the Productivity Commissioner's recommendations of 2020 and the implementation to date of 22 of those 29 recommendations. It has also been developed in conjunction with an external advisory group—many of whom have presented to the Committee today—over many meetings over many months. I thank them for their input. It has improved the proposal and this bill to date. It also comes after amendments to the State infrastructure contributions were included in the 2022-23 half-yearly budget update by the previous Government during the election campaign and a commitment by NSW Labor at that time to review those proposals, should we be successful in forming government.

I thank each of the organisations for their positive engagement so far in the process, but I would like to touch on a couple of things that have been raised here today. There has been a fair bit of discussion about the biodiversity contributions. Importantly, this bill does not change the arrangements with respect to biodiversity schemes but it does provide a better way of funding biodiversity offsets in the future. This bill is policy neutral when it comes to biodiversity offsetting. It follows changes in State and Commonwealth biodiversity legislation and doesn't lock in the current setting. Developers will need to pay a separate charge when the New South Wales Government has taken the lead in securing strategic biodiversity approvals—currently, the Cumberland Plain Conservation Plan. Funds collected from the charge will be applied to conservation measures approved under State and Commonwealth biodiversity laws.

These measures mitigate the impacts of development on biodiversity-certified land. The funds collected from developers to deliver the biodiversity certification will be kept in a separate account from funds used to deliver infrastructure so they won't compete with the funds and will be separately reported and audited. The responsibility for funds to deliver biodiversity certification is held by me as the Minister responsible for meeting the obligations, set by the Minister for the Environment. The Minister for the Environment has a regulatory role under the biodiversity certification legislation and is required to ensure that the conditions of approval are being carried out appropriately, as we just heard from the Treasury officials.

Another important component of this legislation is the way it acknowledges the role of local councils. It does this by leaving local contributions alone and expressly calling out opportunities to fund councils providing infrastructure that is bigger than their own backyards. We have learned the value of partnering with councils to deliver infrastructure through schemes like the Accelerated Infrastructure Fund, which targets projects with local buy-in that can be brought forward quickly to supply housing. That's why we will be setting aside \$1 billion over 10 years from the new housing and productivity contributions, to be provided directly through councils through a grants scheme. I am pleased that Local Government NSW has expressed its support.

Importantly, this contribution scheme isn't a tax. It's something that has been explored in detail through the day, I understand. It is about developers funding infrastructure; it doesn't go into consolidated revenue. New homes need to compete with the established dwellings on price, meaning developers will generally be price takers and will not be able to pass these on to home buyers. Where developers are aware and certain of the charge, they will factor the costs into their investment decisions and reduce the price they are willing to pay for land—

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something that was also touched on by the Treasury officials. Works in kind is something that the industry has touched on and raised with me. Works in kind agreements are a feature of the current special infrastructure contributions scheme and will continue to be an important part of the new scheme, but they must fall in line with the same robust governance and reporting arrangements that we have baked into other parts of this reform. I will be looking closely at proposals put forward by the industry and publish clear rules about how works in kind will operate into the future.

I conclude by thanking everyone who has been able to make a submission in a very quick turnaround time. I appreciate the Committee coming together quickly for this short, sharp inquiry into the bill, which should allow for debate to continue in the upper House as soon as possible. The bottom line is that we need to get on with the job of delivering the right infrastructure in the right place at the right time to support our growing communities and to tackle the looming challenges of the housing crisis. This bill aims to do just that.

The CHAIR: There you have it. Thank you.

Mr PAUL SCULLY: That's all right. We can all go home.

The Hon. SCOTT FARLOW: First, Minister, I thank you for coming here today and making yourself available. I think it's a good practice that you've started in attending upper House committees. I would have liked to have seen more Ministers from our Government take that opportunity as well. I commend you from the outset.

Mr PAUL SCULLY: I was always looking for more opportunities to get information out of former Government Ministers—unsuccessfully, I have to say.

The Hon. SCOTT FARLOW: Just take the compliment for the moment and we'll end there. I do commend you for attending today. As you talk about the housing crisis in New South Wales, 314,000 homes need to be provided. We've heard from the people you need to provide those homes that this bill will not help them in providing those homes as it stands at the moment. Are you looking at making any changes to the bill at present?

Mr PAUL SCULLY: There aren't any changes contemplated. Though, I do want to acknowledge the amendment that was made in the Legislative Assembly during the debate after sensible contributions and discussions with the member for Wakehurst and the member for Wollondilly, which made sure and locked in something that I believed was going to happen anyway. But it made it absolutely certain that where there are special infrastructure contributions schemes, either in existing form or in a draft that had been exhibited, that they will be reflected upon when drawing up the larger infrastructure plan. I would not have brought this bill before the Parliament if I didn't think that it would assist in us dealing with the ongoing question in most communities when it comes to housing growth, which is the provision of infrastructure.

Too often, as a local member and as a shadow Minister—and no doubt you will hear similar things in the future—the frustration of communities is that housing growth comes and, at some point in the future, the associated infrastructure to support that housing and population growth comes along. But for a long period of time there is a gap and that gap is largely put down to a funding mismatch. That is the source of frustration. This seeks to break that by providing a stream of funding. It won't fund every piece of infrastructure, but it is certainly greater than zero, which is currently largely the case. It will help to close that gap and to bring it forward to make sure that communities are getting the infrastructure they need to support them.

The Hon. SCOTT FARLOW: To that point about the infrastructure supporting the development, we've heard concerns today, predominantly from local councils, about the regional nexus that, effectively, the Sydney region is a large region. We haven't heard from Illawarra, Central Coast or Hunter councils as of yet, but the Sydney region is a large region and infrastructure may not necessarily support development in that region. Do you have any response to that?

Mr PAUL SCULLY: When I took a look at what the former Government had proposed in broad terms in its half-yearly budget update—of course a lot of this detail was not enunciated during the election campaign, despite my best efforts to extract the information—the question of whether Greater Sydney should be divided up into three cities was one that I raised. In examining that, I came to the conclusion that it wouldn't work that way. Sydney functions as one of the great cities in the world and functions together. It functions as a whole, and it functions as a collective. There are infrastructure investments in some parts of Sydney that will always support all parts of Sydney.

For instance, we can't produce the number of high-class clinical specialists that we often see doing surgeries and treating patients at RPA. We haven't got those people available to us all the time, so sometimes we have got to concentrate our investment in the physical in one location. We can't have a hospital necessarily in every local government area, but we expect hospitals to be able to provide services to others. Schools provide services across local government boundaries. Sporting facilities and transport is in a similar situation. Sydney

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functions best when it is functioning together. In examining the proposals and the boundaries of some of those areas that are proposed through this, hopefully—after the passage of the bill and subsequent ministerial planning order—it works best together. It is a similar arrangement with respect to the Illawarra and the Hunter. Anyone who has experienced or had involvement with those communities knows that's how they operate as well.

The Hon. SCOTT FARLOW: With respect to affordable housing, it is outlined as regional infrastructure under the bill. The housing and productivity contribution documentation from Planning doesn't outline affordable housing as one of the project components that the housing and productivity contribution fund can be used for. Is affordable housing included? If so, do you have any view as to how much affordable housing? We've had suggestions of 10 per cent of the fund, for instance, being hypothecated to affordable housing. Do you have any views on that?

Mr PAUL SCULLY: The bill includes reference to affordable housing, so it doesn't restrict any current schemes. It is not currently Government policy that this would fund social and affordable housing via the infrastructure contributions. But as a principle, the need for social and affordable housing is due to population factors rather than development. The New South Wales Government has been clear in stating that it will exempt social and affordable housing, in accordance with the Housing SEPP, from being required to make the contributions. At this stage it is not Government policy to include them in the spend, but future decisions of government could allow that. We didn't want to constrain the opportunity for that to happen, should that be a decision of a Cabinet in the future.

The Hon. SCOTT FARLOW: I know about the amendment that occurred in the LA, so take consideration of that. In terms of the infrastructure plans that exist on those six, will you seek to incorporate those into the future funding plans from the housing and productivity contributions fund?

Mr PAUL SCULLY: That's the intent of the amendment.

The Hon. SCOTT FARLOW: And will that include the draft ones as well?

Mr PAUL SCULLY: The amendment goes to both the published and the drafts because they were exhibited, so they are known quantities. The six just weren't working well enough for everyone. There were 10 quite geographically specific special infrastructure contributions that are in place. There were five or so more that had been advertised and exhibited in draft form but had been left lying for some time. They were ad hoc in nature, they were hugely variable in cost and they collected contributions over a long period of time, where you could find yourself well behind the funding eight ball when it comes to making sure that you could actually build the infrastructure that you were collecting funds for. It simply wasn't working to support housing growth and jobs growth. That's why the Productivity Commissioner recommended a wider, broader-based and lower charge, and that's why the previous Government agreed to that. This Government has taken that, given it a bit of a tweak and proposed it as part of this bill.

The Hon. SCOTT FARLOW: We've heard calls today for this implementation to be phased out over a longer period of time of three years. Is that something that you would consider at all?

Mr PAUL SCULLY: We could examine that. I can't speak to what that might mean in terms of fiscal impact. There is a budgetary consideration in all of this. When you're talking about better connecting homes and infrastructure, any additional delay means that connection, or closing that time gap, isn't able to happen as quickly and there are calls on other parts of consolidated revenue to make that up. It's not a costless exercise. I have heard and seen the submissions of industry, who have said that we should delay it to some point in the future or delay the collection from construction certificate to occupation certificate. That's not costless in terms of the budget. That's not costless in terms of the infrastructure delivery. In the simplest of terms, it could also mean that a child halfway through primary school is in high school before the primary school that they need is built.

The Hon. SCOTT FARLOW: The argument from industry is that that's not costless for them either and that it will impede them in being able to deliver additional housing in New South Wales.

Mr PAUL SCULLY: We would not have brought this bill forward if we didn't think it would assist in delivering and helping us meet the housing challenge. I'm aware of the change. When I first started work as a graduate economist I used to be asked to get the principal economist's lunch occasionally. On asking him what he might want, he would say, "Get whatever you want, as long as I can pay you next week for it." I used to think, "Maybe he just hasn't got the cash on him." But it was actually a reflection of the time value of money. Anyone would rather pay something later than pay it now. The reality though, the time value of money also has a time value of infrastructure in this circumstance, which we have to take into consideration as well.

The CHAIR: Did you keep buying his lunch?

CORRECTED

Mr PAUL SCULLY: I did. He always paid me back when I got back in, and I won't name him lest he be embarrassed about that.

The Hon. JACQUI MUNRO: There is clearly a difference between a business borrowing money at a time of peak debt when they are going into the development and construction of housing and the Government's capacity to spend money and borrow money. What do you say about—

Mr PAUL SCULLY: Arguably we're heading towards peak debt at the moment too. We inherited the largest debt of any incoming New South Wales government in the history of the State. We are heading towards \$187 billion in debt in New South Wales in 2026. That comes with an interest bill as well. That interest bill is going to be in the order of \$7 billion, probably a little bit more after yesterday. That \$7 billion is more than \$1½ billion more than what we are currently spending on the Police Force. Anyone who is required to borrow money has it. But the issue here is that a delay in the collection of infrastructure contributions equates to a delay in the delivery of infrastructure, because there are scarce resources of government, just like there are scarce resources of others, and there are unlimited demands.

What we are trying to do is gain some of the social licence for housing growth in areas by making sure the brochure matches the reality, by making sure that people aren't putting their kids into cars to go across several suburbs to go to a school. Take, for example, Gregory Hills. This will be familiar to Mr Buttigieg, Mr Primrose and Mr D'Adam. Gregory Hills has grown from 38 people in 2011 to 14,300 people in 2021. It was only a couple of weeks ago that the sod was turned on the public school, the primary school for that community. No-one can tell me reasonably that a community of 14,300 people in Camden—which is expected to grow to nearly 200,000 people by 2041, an 83 per cent increase—doesn't need a public school. This is the gap that we are seeking to close by this infrastructure funding scheme, because infrastructure funding allows governments to deliver infrastructure.

The CHAIR: Minister, we heard two fairly compelling cases today, one around social licence. Local government and the councils really did present what that actually means and I think that was very compelling. Treasury also presented relying on the modelling from 2020 that was done by the Centre for International Economics and this idea that the industry has had visibility of this for quite some time now. Do you think they are the two primary inputs that provide the justification for the bill and for taking these steps now?

Mr PAUL SCULLY: The bill is necessary, as I said, to better connect housing, jobs and infrastructure. Part of that is the social licence for communities, absolutely. Part of that is just making sure we've got schools and hospitals and open spaces that support population growth. I can appreciate the views of local government. Local government is often the first port of call for many communities to express their frustration. That is why we have the commitment to the \$1 billion over 10 years in grant funding. A lot of local government areas host regional facilities that service more than one local government area. The member for Wakehurst rightly pointed out that in his neck of the woods there's a regional sporting facility that I think from memory was providing facilities for people from seven different local government areas. In the electorate of Wollongong, in the local government area of Wollongong, I host a similarly large regional facility. That is part and parcel of it.

What we have got to do is do things better. The current system isn't working. The gap between when housing arrives and infrastructure arrives has been too great. It adds to the frustration of communities, to the detriment of people's lifestyle and to productivity loss when it comes to people commuting and shuttling across the city to and from work all the time. I genuinely believe and would not have brought this bill before the Parliament if I didn't think that it would help close that gap, it would help engender housing growth to communities and help build more livable communities into the future.

The CHAIR: On the Strategic Biodiversity Contributions Fund, are you open to having an inbuilt review clause around the very fact that the entire scheme that provision relates to is under significant review now, and including the reference to the Commonwealth legislation as well?

Mr PAUL SCULLY: It's a good question. As I said in my opening statement, this bill is a way of funding whatever biodiversity offsets scheme is in place at the time. The Government, as you are aware and as we have discussed, on several occasions, Chair, is undertaking that long overdue statutory review into a system that I think most people accept isn't working to our expectation. Ken Henry is undertaking that work. That work will be before government in the future. The need to fund that and keep those funds separate from general infrastructure funds is an important thing. That is what this bill establishes, that funding architecture.

If there's a decision of government to amend, to change, to update, to do whatever with the biodiversity offsets scheme, that gets reflected in the way this fund will work and fund those schemes. I am sure that, if the Minister for the Environment came to the Cabinet with a series of suggested amendments that were supported by Cabinet with respect to changing the biodiversity offsets scheme and that involved consequential amendments to

CORRECTED

this or other bills, that would generally be agreed. I appreciate what you are trying to achieve. I'm not sure that it is necessary, in that it has a cascading effect and this is a funding architecture rather than a biodiversity offsets scheme in its own right.

The Hon. SCOTT FARLOW: You mentioned Gregory Hills before. We received a submission from the Marist Brothers of Gregory Hills. This is an area that I am interested in whether you have contemplated and that relates to—

Mr PAUL SCULLY: I haven't had an opportunity to read the submission.

The Hon. SCOTT FARLOW: I am happy to provide it or have the committee secretariat provide it to you, or even for Planning to take on notice. It works around the grandfathering of existing credits under the SICs that exist at the moment. I believe under their circumstance there is a SIC offset credit and they have an agreement with Planning. They have asked for a longer phase-in period because of this. Is this something that Planning is contemplating on how this will work?

Mr PAUL SCULLY: I can't recall off the top of my head which of the special infrastructure contributions schemes they might be part of, so I may defer to Mr Ray or Mr Schipp on this one.

JONATHON SCHIPP: I can answer that one, Minister. I understand that that's within the Western Sydney Growth Areas SIC. We've said that that's not one of the ones that's going to transition, should the bill pass on 1 October. We are going to need a few more years.

The Hon. SCOTT FARLOW: This is 18 million.

JONATHON SCHIPP: Yes, that's right. That is to give us time to be able to finalise precisely what you've talked about. There are existing credits that exist. They have to be reconciled in order for them to come into the new scheme.

The Hon. SCOTT FARLOW: How significant is this? How many are there that would be existing credits outstanding across the SICs?

JONATHON SCHIPP: I couldn't say. I don't have the information to hand. We can take that on notice.

The Hon. SCOTT FARLOW: Another question raised by Georges River Council in its submission, and again I take it that you don't have the submission but trust me on this one—and I know that it's a difficult thing to do.

Mr PAUL SCULLY: I will, Mr Farlow, I will.

The Hon. SCOTT FARLOW: Effectively the question it raises is in terms of if there is something in its local infrastructure contribution plan at present, then that becomes part of the State's infrastructure contribution plan, can it still collect funds under that local infrastructure contributions plan? Again, I know this is something that may not have been contemplated but I am putting through some of the stakeholder questions.

Mr PAUL SCULLY: I might defer to Mr Schipp on this one.

JONATHON SCHIPP: They can. Under the legislation at the moment, there is a restriction so that if something does appear in a special infrastructure contributions determination, it can't be funded by the local scheme. But we have removed that restriction in this bill. I can find the precise reference for you if it would assist. It would be the change to section 7.18, omitting 7.18 (2A). It currently says that you can't have something in a local plan if it's in a State plan. By removing that, they can continue to fund those things under the local scheme if there is going to be funding kicked in from the State through this new scheme.

The Hon. SCOTT FARLOW: What would that look like? Would that be like a local park, for instance, that might be allocated funding?

JONATHON SCHIPP: As the Minister mentioned in his opening remarks, we are looking at kind of the scale of things that are bigger than the backyard of a local government area. So the catchment has to be kind of bigger, but similar to schemes—

The Hon. SCOTT FARLOW: A sporting facility, for instance, or something like that?

JONATHON SCHIPP: Potentially.

MARCUS RAY: If I might just elaborate on that, we have had great success over the past few years where we have been able to provide some matching State funds to unlock local contributions. In those circumstances, that's the perfect set of circumstances where we could join up State contributions with local contributions in order to bring forward infrastructure.

CORRECTED

The Hon. SCOTT FARLOW: I turn back to the Productivity Commissioner's report, Minister. I think you outlined that 22 of the 29 recommendations have been implemented, to your mind.

Mr PAUL SCULLY: Or are in the process of being implemented. Obviously, this contains a couple of them as well.

The Hon. SCOTT FARLOW: Indeed. What's the status of the rest? Is the Government committed to implementing the rest of the recommendations in the Productivity Commissioner's report?

Mr PAUL SCULLY: A number of the other recommendations have direct impacts on local government, so that's something that would need to be carefully worked through. We are working on the process of implementing those that we have direct control over. This bill relates to three of those recommendations. As I said in my opening comments, 22 of the 29 have either been implemented or are in the process of being implemented. We haven't been around that long in government, as you would appreciate. It is often work that was started under the previous Government that is continuing.

The Hon. JACQUI MUNRO: There was a point raised about the infrastructure opportunities plan—that at the moment it has essentially a 20-year project plan. There was a suggestion made that there should also be a five- and 10-year plan included. I wanted to see what your thoughts were on that and also if there's an expected time line for the delivery of the first plan, like longlist and shortlist.

Mr PAUL SCULLY: Hopefully we can get stuck into it after the bill has been passed, and hopefully you guys will get on board and help us pass it. That would be good. Part of the timing will depend on the passage of the bill, the implementation of that and the work that we have to do through the longlist, as it is now colloquially being referred to—the infrastructure opportunities plan. There is a great deal of stakeholder engagement in that. There are forums in the urban development program. Obviously, we are looking to get things in place where we can start the rollout of infrastructure that accords with the collection of contributions from this scheme, should it be successful—asterisk "should it be successful"—in getting passage through the Parliament, as quickly as we possibly can.

If it passes I, along with the Treasurer, would be required to take something back to Cabinet later in the year. I have to say that the infrastructure that is part and parcel of this is not like tablets from the mount that are being handed down. Infrastructure is flexible, and the aim of this entire scheme is to better reflect where there is growth with the infrastructure need. All of this will be subject to the same oversight arrangements, expenditure arrangements and auditing arrangements out of the funds as special deposit accounts. Of course, if the Committee agrees that this should be passed next sitting week, bring it on. Let's do it.

The Hon. JACQUI MUNRO: I definitely agree with what you're saying about the flexibility. That's why the five- and 10-year elements were proposed. But are we talking six months or 12 months before developers, essentially, can get some more certainty around the kind of infrastructure that will be prioritised by the Government?

Mr PAUL SCULLY: It depends when the bill is passed, in part.

The Hon. JACQUI MUNRO: I'm not talking about weeks. I'm talking about months or years.

Mr PAUL SCULLY: We know some of that infrastructure already. The amendment in the Legislative Assembly says that the special infrastructure contributions scheme needs to come through. We know where there's a series of schools and growing communities. We know the sorts of things that need to come through. Of course we need to formalise some of these things through the infrastructure opportunities plan, through the urban development program, through the stakeholder consultation and through the engagement with local government. I would be seeking to do that as quickly as possible. Why? Because the people who are going into homes in new communities expect that infrastructure as quickly as possible.

The Hon. JACQUI MUNRO: I couldn't agree more. That's good. I also wanted to clarify something from your opening remarks. You obviously spoke in your second reading speech about the \$1 billion to local government. Was I right in hearing that that \$1 billion would be taken from the \$700 million expected to be generated each year? Is that right? So there will be some amount, \$100 million less whatever, per year?

Mr PAUL SCULLY: No, not per year. We can't take \$1 billion when we're only generating \$700 million.

The Hon. JACQUI MUNRO: No, \$100 million per year from that, for example.

Mr PAUL SCULLY: Yes, that could be a profiling of it. I haven't got that profiling to hand. That would be developed in terms of if there were any changes to the scheme as put forward.

CORRECTED

The Hon. JACQUI MUNRO: I also just wanted to raise something that—

The Hon. SCOTT FARLOW: Just on that point, there is a little bit of an asterisk around that, though. I think the terminology was "up to \$1 billion". Are you proposing to have any sort of guaranteed amount for local government out of the fund, or is it just sort of surplus to whatever might be—

Mr PAUL SCULLY: We're proposing \$1 billion over 10 years as a grant fund to local government to fund regionally significant infrastructure that is bigger than their backyards, although they may host it. A particular local government area may host it.

The Hon. JACQUI MUNRO: And taken out of that fund.

The CHAIR: Which is in stark contrast to the cost shifting that has arguably gone on for a decade.

The Hon. SCOTT FARLOW: Look at the \$5 billion WestInvest fund.

Mr PAUL SCULLY: Chair, it was in stark contrast to what the previous Government provided as well, because they were doing the opposite. They were taking money from local government to put it into, effectively, a fund that was going to behave like consolidated revenue at State level.

The CHAIR: That's right.

Mr PAUL SCULLY: This is known, certain, transparent, auditable and reportable, and it has been known for some time. I think it's probably the most sensible infrastructure contributions reform, certainly brought before this Parliament.

The CHAIR: In that sense, again, we heard that genuine local government voice—almost kind of the sigh of relief there.

Mr PAUL SCULLY: Importantly, not touching on any of their own funding arrangements.

The CHAIR: That's right.

Mr PAUL SCULLY: I recall that as the shadow Minister I had a number of local government areas—general managers, mayors, councillors—at the time that the first proposal came before the Parliament, tacked onto and stapled on the back of the 2021 budget, saying, "Don't touch our stuff. Don't touch our funding," because they've got community expectations as well in terms of infrastructure funding and infrastructure delivery. We have very deliberately not sought to cut into section 7.11 or 7.12 contributions—

The CHAIR: Section 7.12.

Mr PAUL SCULLY: —in these circumstances in recognition of the fact that local government, State Government and Federal Government all have varying infrastructure needs that they have to deliver to communities. That is part and parcel of making sure that we're all working together to build those livable communities that people want to live in, again, so that the reality matches the brochure—or better matches the brochures, at least.

The Hon. JACQUI MUNRO: If I may, Minister, I might refer you to—again, I'm not sure if you've seen this one—the Sutherland Shire Council's submission, which states:

Should the proposed \$12k or \$10k contributions proceed, there will be consequent pressure applied to Councils to collect less through local infrastructure contributions ...

So there is certainly a concern from local governments that actually this will reduce their ability to collect funds.

Mr PAUL SCULLY: I think the evidence from Local Government NSW this morning suggested that they were quite comfortable with the arrangements in the bill.

The CHAIR: It sounded like a real concern, but it was a concern flagged.

Mr PAUL SCULLY: Yes, theoretically, that could be a thing in that some people could argue, "I am paying this contribution here, so therefore I should pay slightly less in, say, a voluntary planning agreement." Yes, that's a theoretical argument. A voluntary planning agreement, of course, is a negotiation. So, as a proponent, you'd probably be mad not to try to reduce that amount that you're paying. Whether that comes to fruition, I think Local Government NSW seems to be of the view—and I'll stand corrected—that it's an unlikely and a very marginal chance of that happening.

The CHAIR: Minister, I think potentially the buffer to deflecting that fear is that we heard that Local Government, through the planning process and the infrastructure plans and the lists, is a genuine participant. It is an active—I think is its term—participant, and there is some formalised agreement around that, that it is not just a body that gets a look in or a consultation of some sort. It is genuinely—

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Mr PAUL SCULLY: Yes. I can understand the concern, and the theoretical concern, if you like. However, it's also offset by the fact that there's a billion-dollar grant fund that's going to support local government. That's not money that's ever really been on offer before in terms of this sort of arrangement.

The Hon. SCOTT FARLOW: I guess the concern from a council like Sutherland is how much of that billion dollars will they get a look into and is there any—

Mr PAUL SCULLY: Well, knowing Sutherland council, they're a pretty good operator so I'd expect that they'd have pretty high-quality grants, and our changes to grants arrangements will mean everyone will be able to see exactly what they get. It will be very transparent.

The Hon. SCOTT FARLOW: One of the other concerns we've heard from local government is in terms of the definition of a "high-growth area" and what will be defined as a high-growth area. The funding will support high-growth areas. For instance, would Sutherland, around the railway station, potentially be deemed a high-growth area, or will there be other areas that are deemed high-growth areas instead?

Mr PAUL SCULLY: It has the potential. In part, it will depend on the housing that might be coming forward in that area. This is about connection and the nexus between housing growth and infrastructure need. If Sutherland council is proposing to take on a substantial, reasonable share of housing growth around a station, for instance, as you've suggested, then of course that would factor into the Government's thinking when putting forward and working through the infrastructure priorities.

The Hon. SCOTT FARLOW: And in terms of that definition—

Mr PAUL SCULLY: But, of course, the Sutherland work isn't done in isolation. There will be communities throughout Greater Sydney that will take—

The Hon. MARK BUTTIGIEG: Even so, to your point, Minister, about this being theoretical, nothing in this legislation delimits the power of local government to charge—

Mr PAUL SCULLY: No, very deliberately not. That was one of the great failings of the previous piece of legislation—that it did take money straight from local government and transfer it to the State. We've been very deliberate in leaving the local government funding stream alone, in recognition of the important role that local government and local government infrastructure contributions and collections and delivery has in terms of building those livable communities.

The Hon. SCOTT FARLOW: Minister, going back to that definition of high-growth areas, how small will those high-growth areas be? So, for instance, in that example of Sutherland council and around Sutherland station, could that be considered a high-growth area, or would you be looking at a larger council area or geographic region or the like to be determined as a high-growth area?

Mr PAUL SCULLY: Again, it would be reflective of the housing proposed. I mean, a high-growth area, if you're putting, say, single-storey homes around a railway station that may not meet the definition of high growth as opposed to doing multistorey or multi-unit developments around a railway station. It's—

The Hon. SCOTT FARLOW: But to that question, do you have a definition of high growth? Mr Schipp?

The Hon. ANTHONY D'ADAM: Through the Minister, of course.

JONATHON SCHIPP: There's not so much a concept of designating areas as high growth and then putting money into that area; it's more about using the governance framework the Minister's articulated to bring up through the local councils, through the delivery agencies and through the development industry what are the infrastructure investments or priorities that are needed to accommodate that growth. So we aren't—I don't think it's part of the proposal to go and draw a line around an area and say, "That's a high-growth area and that's where we're going to spend the money." It's about spending the money on the infrastructure projects that will actually support where the growth is going.

The Hon. MARK BUTTIGIEG: Given the pre-existing subject matter expertise on the ground—local councils, planning authorities—you use that existing infrastructure to give you the micro-economic detail on where the money should go?

JONATHON SCHIPP: Yes, that's correct.

The Hon. ANTHONY D'ADAM: I note the time. I just wanted to ask the Minister whether there is anything else he wants to raise with the Committee or put on record?

CORRECTED

Mr PAUL SCULLY: In considering this bill, we've got to consider both what this bill is and what it's not. This bill is one piece of legislation that sets up a funding architecture that allows us to help close the gap—it doesn't absolutely close the gap—between when housing arrives and when infrastructure can be delivered. It is part and parcel of a suite of measures that the Government has brought forward, in some instances, and will be bringing forward into the future in terms of addressing our housing challenges in New South Wales.

This bill won't solve everything, but it goes a long way to solving one of the big things, which is the frustrations of local communities who say, "Look, we'd be happy to take our additional share of housing growth to help make sure that young people and families get a home, but the hospital down the road needs an upgrade, it's not quite up to what we need or not the size we need. There needs to be a school in this growing community, because there isn't one. There needs to be upgrades to emergency services to make sure that we've got firefighters and police in place to be able to deal with emergencies as and when they occur." That's the key point of this: It's the architecture that allows the delivery of the infrastructure. That's what this bill seeks to do, and I believe that this bill will actually do that. It will help to achieve the housing outcomes and I would strongly encourage the Committee to recommend its passage through the Legislative Council.

The CHAIR: I think Mr Schipp had some material around concurrence that perhaps we don't have to raise now, but maybe—

JONATHON SCHIPP: No, I did undertake to send that to you, Chair. It will come shortly.

The CHAIR: Wonderful, thank you very much. That concludes this session. There were a couple of things taken on notice. We're requesting that they be provided by close of business on Tuesday, because of the very short turnaround, and it would be appreciated if any corrections to the transcript are provided within 24 hours of receipt of it. Thank you for your evidence and time. That concludes our session and hearing for today.

(The witnesses withdrew.)

The Committee adjourned at 16:33.