



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 7

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



Report 19

June 2023

7

Portfolio Committee No. 7 - Planning and Environment

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

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**New South Wales. Parliament. Legislative Council. Portfolio Committee No. 7 - Planning and Environment.
Report no. 19.**

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

"June 2023"

Chair: Ms Sue Higginson, MLC



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Terms of reference

1. That:
 - (a) the provisions of the [Environmental Planning and Assessment Amendment \(Housing and Productivity Contributions\) Bill 2023](#) (not yet accompanied by a Statement of Public Interest) be referred to Portfolio Committee No. 7 - Planning and Environment for inquiry and report,
 - (b) the bill stand referred to the committee on receipt of the message from the Legislative Assembly forwarding the bill, the bill being read a first time and the Statement of Public Interest being tabled, and
 - (c) the committee report by 27 June 2023.

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 30 May 2023.¹

¹ *Minutes*, NSW Legislative Council, 30 May 2023, p 131.

Committee details

Committee members

Ms Sue Higginson MLC	The Greens	<i>Chair</i>
The Hon John Ruddick MLC	Liberal Democratic Party	<i>Deputy Chair</i>
The Hon Mark Buttigieg MLC	Australian Labor Party	
The Hon Anthony D'Adam MLC	Australian Labor Party	
The Hon Scott Farlow MLC	Liberal Party	
The Hon Jacqui Munro MLC	Liberal Party	
The Hon Peter Primrose MLC	Australian Labor Party	

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Chair's foreword

On 30 May 2023, the Legislative Council referred the provisions of the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 to Portfolio Committee No. 7 – Planning and Environment for inquiry and report by 27 June 2023.

The bill proposes to introduce a housing and productivity contribution to replace the current special infrastructure contribution scheme, alongside a strategic biodiversity contribution fund. The stated purpose of the housing and productivity contribution is to support the provision of regional infrastructure, which includes public amenities or services, affordable housing, transport infrastructure, roads, and measures to conserve or enhance the natural environment.

The committee received evidence from a variety of stakeholders including councils, environmental organisations, community housing groups, and representatives from the housing and construction industry, as well as NSW Treasury and the Department of Planning and Environment. Stakeholders were generally supportive of the bill, particularly in relation to its implementation of recommendations made by the Productivity Commission in its November 2020 report, *Review of Infrastructure Contributions in New South Wales*.

It was clear to the committee that councils are pleased that the bill does not interfere with their ability to continue to collect local infrastructure contributions. However, the separate issue of whether the new housing and productivity contribution should be levied at the construction certificate or occupation certificate stage of a build was a point of contention throughout the inquiry, with strong views expressed on the issue by both councils and representatives of the housing and construction industry.

The committee recognises the clear benefit of the contribution being paid at the point of the granting of a construction certificate. Many communities agree to additional development or increased density on the understanding that there will be corresponding improvements to local and regional infrastructure. It is important that social licence is maintained and infrastructure lag avoided so that local areas can support the additional population. While the committee appreciates the concerns voiced in relation to the potential impact of the housing and productivity contribution on supply, the reforms proposed by the bill have been well-flagged to stakeholders for a number of years.

There is some ambiguity around aspects of the bill, notably whether it will enable the provision of affordable housing. Stakeholders were pleased to see affordable housing included in the definition of regional infrastructure able to be funded by the contributions. However, the committee is unsure if there will be tangible benefits from its inclusion, noting the Minister's statement that at this stage, contributions will not be used to fund affordable housing. The committee also believes that it would be beneficial to specifically include public and social housing for the purposes of the fund.

While the committee did not learn of any objections to the introduction of a separate strategic biodiversity contributions fund under the bill, there is a level of unease around its operation given that a number of reviews of relevant biodiversity legislation are underway at the state and federal level. It is important that the outcomes of these reviews are appropriately incorporated in relation to the strategic biodiversity contributions fund in due course.

The committee is grateful to the various stakeholders who participated in the inquiry, particularly given the short notice for submissions and the hearing. Their contributions were invaluable in informing our consideration of the bill. The committee also expresses our gratitude to the Hon Paul Scully MP, Minister for Planning and Public Spaces, for his willingness to appear before the committee and provide additional information on the bill. Finally, the committee thanks the secretariat for their diligence and professional capacity for making it possible to undertake this inquiry in such a short timeframe.

The committee refers the bill back to the House for its consideration, and recommends that the concerns raised by stakeholders be addressed during debate.

A handwritten signature in black ink, appearing to read 'Sue Higginson', with a stylized flourish extending to the right.

Ms Sue Higginson MLC
Committee Chair

Recommendations

Recommendation 1

23

That the Legislative Council proceed to debate the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 30 May 2023.

The committee received 22 submissions.

The committee held a public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee’s website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter sets out the background to the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, (hereafter, the bill), including an overview of the bill's purpose and provisions. This chapter also summarises the NSW Productivity Commission's 2020 review of infrastructure contributions in NSW which underpins the principles contained in the bill.

NSW Productivity Commission Review

- 1.1** In April 2020, the Hon Rob Stokes MP, former-Minister for Planning and Public Spaces, requested the NSW Productivity Commission to undertake a review of the New South Wales infrastructure contributions system.² The Commission finalised the review in November 2020, making 29 recommendations in the report.
- 1.2** The review found that 'the current infrastructure contributions system is not fully enabling the State and councils to provide the infrastructure required to support development', based on a failure to collect sufficient funds. The review also found that previous efforts to reform the system have resulted in a system that is 'overly complex, unpredictable and imposes undue administration costs', with a negative impact on housing supply and levels of service across some communities.³
- 1.3** Within the review, a number of priority areas relevant to the bill were identified, including:
- the adoption of broad-based regional contributions in Greater Sydney, Central Coast, Hunter, and Illawarra-Shoalhaven to fund State infrastructure associated with development (replacing special infrastructure contributions plans),
 - an additional transport infrastructure contribution, applied to new development in the service catchments of major investments, and
 - the creation of a new category of contributions specific to biodiversity.⁴
- 1.4** In March 2021, the then Government accepted all 29 recommendations.

Referral of the bill

- 1.5** The bill was introduced in the Legislative Assembly on 23 May 2023 by the Hon Paul Scully MP, Minister for Planning and Public Spaces (hereafter, the Minister).
- 1.6** The bill was debated on 31 May 2023 and passed the Legislative Assembly with one amendment on the same day. The amendment agreed to was moved by Ms Judy Hannan MP,

² NSW Productivity Commission, *Infrastructure Contributions Review*, <https://www.productivity.nsw.gov.au/infrastructure-contributions-review>.

³ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales – Final Report*, November 2020, p 3.

⁴ NSW Productivity Commission, *Infrastructure Contributions Review*, <https://www.productivity.nsw.gov.au/infrastructure-contributions-review>.

Member for Wollondilly and was in regards to how the new scheme would interact with development contributions determinations made under the existing Special Infrastructure Scheme or contributions proposals currently under exhibition.

- 1.7 Prior to its introduction in the Legislative Council, the bill was considered by the Selection of Bills Committee on 30 May 2023. The committee recommended that the bill be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report, with the reporting date set for 31 July 2023.⁵ The provisions of the bill were referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report by the Legislative Council on 30 May 2023, with an amended reporting date of 27 June 2023.⁶

Background and purpose of the bill

- 1.8 The bill proposes amending the *Environmental Planning and Assessment Act 1979* in order to replace the existing special infrastructure contribution in NSW with a new charge called a housing and productivity contribution.
- 1.9 A special infrastructure contribution (hereafter, SIC) is paid by developers in specifically defined areas. The SIC applies to new development only and aims to support the cost of infrastructure delivery. This infrastructure includes state and regional roads, open space, schools and health-facilities.⁷
- 1.10 During the second reading speech, the Minister explained that the bill seeks to amend the existing scheme in order to address the 'significant housing crisis' currently being experienced in NSW. The Minister said that in order to meet housing demand over the next five years, 314,000 new dwellings would have to be built in NSW. However, he noted that it is expected that only 180,000 new dwellings will be completed, resulting in a shortfall of 134,000 new dwellings.⁸
- 1.11 The Minister explained that while the bill will not 'solve all aspects of the housing crisis', it does aim to address the issue of housing supply by 'dealing with a key bottleneck in infrastructure'.⁹ It will do so by replacing the existing system of contribution charges with a simpler charge that will provide a source of funding for necessary infrastructure such as schools, hospitals, roads, railways and parks.¹⁰

⁵ Selection of Bills Committee, NSW Legislative Council, Report No. 2 (2023), p 2.

⁶ *Minutes*, NSW Legislative Council, 30 May 2023, p 131.

⁷ NSW Government, *Special Infrastructure Contributions*, <https://www.planning.nsw.gov.au/plans-for-your-area/infrastructure-funding/special-infrastructure-contributions>.

⁸ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

⁹ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁰ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

1.12 According to the Minister, the new scheme would result in an overall increase in growth infrastructure spending which would have the effect of 'unlocking the new housing supply that we so desperately need'.¹¹ When fully operational, the proposed contribution scheme proposed in the bill will generate around \$700 million a year. The Minister stated that these funds would be managed in a way to ensure they can only be spent in the region they are collected and are 'committed to projects that genuinely support housing and growth'.¹²

Details of the scheme proposed in the bill

1.13 The object of the bill, as set out in the explanatory note, is to 'establish a housing and productivity contribution scheme to facilitate the provision of regional infrastructure that supports and promotes housing and economic activity'.¹³

1.14 The bill sets out that the Minister for Planning and Public Spaces may make a Ministerial order that requires a housing and productivity contribution from developers. The contributions imposed on development in a particular region would be used to fund infrastructure in that region, which is defined as including:

- Public amenities or public services
- Affordable housing
- Transport infrastructure
- Regional or State roads
- Measures to conserve the natural environment.

1.15 The Ministerial order will include details such as the nature of the level and nature of the contributions and other relevant components of the contribution. Additionally, the Planning Minister must obtain concurrence of the Treasurer prior to making the order.

1.16 The bill also establishes two funds for housing and productivity contributions, which are:

- the Strategic Biodiversity Contributions Fund administered by the Planning Secretary, and
- the Housing and Productivity Fund administered by the Secretary of the Treasury.

¹¹ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹² The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹³ Explanatory note, Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 (NSW).

Spending arrangements for the Housing and Productivity Fund

- 1.17** In the second reading speech, the Minister noted that the community and development industry had expressed a number of concerns about how the government will make decisions on how the funds raised by the housing and productivity contribution scheme will be spent.¹⁴ Accordingly, the bill establishes how the funds generated by the proposed new scheme will be spent.
- 1.18** The Minister explained that the Housing and Productivity Fund (hereafter, the HAP Fund) will be administered by the Secretary of the Treasury. The Minister stated that the HAP Fund 'has a clear purpose: to support housing and promote economic activity'.¹⁵
- 1.19** Further, the HAP Fund will target projects that relate to strategic planning priorities, which include: meeting housing targets, delivering projects in a reasonable time and ensuring projects are aligned to growth infrastructure plans. Specifically, in order for money to be paid out of the fund to support a project, it must be in either a State strategic plan or the State Infrastructure Strategy.¹⁶
- 1.20** The Minister for Planning and Public Spaces will be able to make recommendations regarding how the money should be spent, provided that these recommendations align with the purposes of the fund.¹⁷
- 1.21** Additionally, councils are able to make submissions to the Treasurer about seeking funds from this fund to deliver 'much-needed infrastructure' projects.¹⁸
- 1.22** Finally, the HAP Fund will be subject to financial reporting requirements, including the provision of financial reports to be published and audited for each account.¹⁹

¹⁴ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁵ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁶ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁷ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁸ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹⁹ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

Chapter 2 Key issues

This chapter considers key issues identified by stakeholders in relation to the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023. These issues include the bill's impact on housing supply and the construction industry, as well as the stage in the building process when the housing and productivity contribution should be paid. The chapter also discusses the interaction of the proposed housing and productivity contribution scheme with contributions currently collected by local councils, issues around affordable housing, the scope of regions within the scheme, and considerations regarding the strategic biodiversity contributions fund.

The housing and productivity contribution scheme

- 2.1** The majority of inquiry participants were generally supportive of the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 (hereafter, the bill).²⁰ As discussed in chapter 1, the bill implements a number of recommendations from the NSW Productivity Commission's *2020 Review of Infrastructure Contributions in New South Wales Final Report*.²¹ The NSW Productivity Commission was supportive of this element of the bill, noting that the reforms it implements 'will deliver a transparent, certain, cost-reflective, and simpler system that will unlock new housing supply, deliver vital infrastructure, and boost investment in New South Wales'.²²
- 2.2** The reforms proposed in the bill represent a second attempt at legislating a number of recommendations contained in the NSW Productivity Commission's review. The first attempt at reform occurred in 2021 in the form of the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (hereafter, the 2021 bill). The 2021 bill was passed by the Legislative Assembly on 12 October 2021 and was subsequently introduced in the Legislative Council on 13 October 2021. However, the bill did not proceed to debate in the Legislative Council and subsequently lapsed upon prorogation of the 57th Parliament.
- 2.3** The committee heard that in various respects the current bill was an improvement, with stakeholders indicating that their concerns with the 2021 bill, including that local contributions collected by councils will not be affected by the new scheme and the requirement of regional nexus, had been addressed by in the current bill.²³ The Planning Institute of Australia applauded the bill for its clarity around regional infrastructure contributions compared to the previous bill.²⁴ Local Government NSW welcomed the stronger and more transparent

²⁰ Submission 1, Community Housing Institute Australia (NSW), p 3, Submission 17, Local Government NSW, p 4, Submission 5, City of Sydney Council, p 1, Submission 11, Southern Sydney Regional Organisation of Councils, p 1, Submission 21, Northern Sydney Regional Organisation of Councils, p 1.

²¹ NSW Productivity Commission, *Review of Infrastructure Contributions in New South Wales – Final Report*, November 2020.

²² Submission 18, Productivity Commission, p 1.

²³ Submission 12, Hornsby Shire Council, p 1; Submission 17, Local Government NSW, p 3; Submission 21, Northern Sydney Regional Organisation of Council, p 1.

²⁴ Evidence, Mr Greg New, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia, 8 June 2023, p 26.

governance arrangements with a greater focus on strategic planning priorities and a whole of government approach to infrastructure investment.²⁵

Improvements on the current scheme

2.4 Many stakeholders accepted that a contributions scheme of some kind is necessary to support the provision of infrastructure as an adjunct to housing development.²⁶ However, the committee heard that the current contributions scheme has a number of weaknesses, including that it is 'ad hoc',²⁷ 'complex',²⁸ and needs improvements to its efficiency.²⁹

2.5 The special infrastructure contributions (hereafter, SIC) component of the current scheme was particularly criticised by some inquiry participants. A SIC is currently paid by developers on new development in Special Contribution Areas, with the Minister for Planning and Public Spaces (hereafter, the Minister) determining the areas in which SICs are payable. There are currently ten contribution areas in New South Wales.³⁰ Stakeholder evidence on the SIC scheme included:

- The Productivity Commissioner described it as not fit-for-purpose, as '...the application of special infrastructure contributions is inconsistent and lacks transparency, creating complexity and uncertainty for stakeholders'.³¹ The Commissioner's submission noted that SICs apply to limited geographic areas, utilise different charging methodologies and can be quite high in areas in which they are used. Its submission referred to the SIC scheme as a 'patchwork' system, contributing to a lack of infrastructure to adequately support population growth in relevant areas and resulting in community confidence being 'compromised'.³²
- NSW Treasury similarly relayed to the committee that '...stakeholders...noted that the existing system of the special infrastructure contributions system is narrow, ad hoc, unpredictable and stop-start, resulting in an inconsistent patchwork of changes that raised insufficient revenue to meet the infrastructure requirements of a growing city or regions'.³³

2.6 While not commenting specifically on the merits of the current system, representatives from the local government sector, along with a development firm, raised concerns about what

²⁵ Submission 17, Local Government NSW, p 4.

²⁶ See, for example, Submission 5, City of Sydney Council, p 1; Submission 15, Georges River Council, p 1; Submission 18, Productivity Commission, p 1.

²⁷ Evidence, Hon Paul Scully MP, Minister for Planning and Public Spaces, 8 June 2023, p 52.

²⁸ Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 17.

²⁹ Submission 6, City of Ryde Council, p 1.

³⁰ Answers to questions on notice, Department of Planning, received 13 June 2023.

³¹ Submission 18, Productivity Commission, p 1.

³² Submission 18, NSW Productivity Commission, p 1.

³³ Evidence, Mr Michael Gadiel, Executive Director, Centre for Economic Evidence, NSW Treasury, 8 June 2023, p 43.

would happen to the special infrastructure contributions already in the system.³⁴ In particular, Southern Sydney Regional Organisation of Councils wanted to ensure these funds are appropriately transitioned and not diverted elsewhere, and called for detailed briefings and advice should be provided to councils so affected,³⁵ while Local Government NSW recommended that infrastructure identified in an existing SIC plan be guaranteed funding under the new scheme.³⁶

2.7 However, other stakeholders were less supportive of the change, including Canterbury Bankstown Council who opposed the introduction of a housing and infrastructure contribution and argued that the bill should be rejected for the following reasons:

- disproportionate impact on economically disadvantaged communities due to its flat rate
- lack of consistency in infrastructure funding
- lack of local allocation of the housing and productivity contributions fund
- reactive annual process for determining infrastructure works schedule
- limited council influence on expenditure
- inadequate exemption of large-scale affordable residential development
- lack of exemption for critical council works.³⁷

Impact on housing supply and construction industry

2.8 The committee heard various views on how the bill, through its introduction of a housing and productivity contribution, would impact housing supply. While generally supportive of the bill, the Property Council of Australia warned that it presented risks to housing supply, as the proposed contributions have the potential to dampen incentives for investment.³⁸

2.9 Concerns about a negative effect on housing supply – particularly in the context of the current housing supply crisis – were raised by other representatives of the development sector, including the Urban Development Institute of Australia and Urban Taskforce Australia.³⁹ The Taskforce noted that NSW already has the highest fees and charges in Australia as a result of stamp duty, GST, company tax, sections 7.11 and 7.12 contributions, land taxes, affordable housing contributions, local green space contributions, as well as the proposed restitution of water infrastructure charges.⁴⁰

³⁴ Submission 11, Southern Sydney Regional Organisation of Councils, p 4; Submission 8, Crase, p 1; Submission 17, Local Government NSW, p 7.

³⁵ Submission 11, Southern Sydney Regional Organisation of Councils, p 4.

³⁶ Submission 17, Local Government NSW, p 7.

³⁷ Submission 10, Canterbury Bankstown Council, pp 1-2.

³⁸ Submission 20, Property Council of Australia, p 2.

³⁹ Evidence, Mr Steve Mann, Chief Executive Officer, Urban Development Institute of Australia, 8 June 2023, p 31; Submission 2, Urban Taskforce Australia, p 1.

⁴⁰ Submission 2, Urban Taskforce Australia, p 1.

2.10 Concerns about the potential impact of the bill on the housing and construction industry were not limited to developer groups. Some councils also expressed concern that the bill would negatively impact development feasibility. This included Sutherland Shire Council who expressed concern that the bill would result in councils experiencing pressure to 'do more local infrastructure work with less funding to support it'.⁴¹ Willoughby City Council similarly warned that passage of the bill could result in fewer local contributions from developers due to its impact on development feasibility.⁴²

2.11 In his second reading speech, the Minister stated that the new scheme would have a 'negligible' impact of the feasibility of development projects, with the contribution representing only a 'tiny fraction of the land value uplift arising from the right to build additional dwellings'.⁴³ These comments were echoed by Treasury representatives at the hearing, with Mr Matt Greiss, Director, Planning, Industry and Environment stating 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... it's unlikely that developers in the long term will actually wear the economic burden of the contribution.⁴⁴

Timing of payments and their impact on housing supply

2.12 Numerous inquiry participants voiced strong opinions on when the housing and productivity contribution payment should be paid. One of the major points of disagreement among inquiry participants was whether the housing and productivity contribution should be paid at the occupation certificate stage of development, as opposed to the proposed construction certificate stage.

2.13 On one hand, councils were strongly of the view that the contributions should be collected before a construction certificate is issued, consistent with current practice, in order to ensure the surrounding infrastructure is able to be delivered in a timely manner.⁴⁵

- The City of Sydney Council emphasised that if housing and productivity contributions were made at the occupation certificate stage, funding would be received too late for the delivery of regional infrastructure. It would not be ready for when occupants move in and thus result in 'infrastructure lag'.⁴⁶
- Willoughby City Council warned that councils do not have the financial capacity to forward fund infrastructure projects, and that allowing contributions to be paid at the occupation certificate stage would 'delay timely provision of essential community

⁴¹ Submission 9, Sutherland Shire Council, p 2.

⁴² Submission 16, Willoughby City Council, p 2.

⁴³ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

⁴⁴ Evidence, Mr Matt Greiss, Director, Planning, Industry and Environment, NSW Treasury, 8 June 2023, p 49.

⁴⁵ Submission 5, City of Sydney Council, p 1; Submission 21, Northern Sydney Regional Organisation of Council, p 2.

⁴⁶ Submission 5, City of Sydney Council, p 3.

infrastructure, or require existing communities to carry the burden of paying for the infrastructure costs for new developments until the payments are made'.⁴⁷

- The Northern Sydney Regional Organisation of Councils was of the firm view that housing and community infrastructure must be built in tandem so they are operational at the time residents move in.⁴⁸ It stressed that this ensures that 'councils have the "social licence" from communities for increasing housing density and traffic'.⁴⁹
- Mr Greg New of the Planning Institute of Australia noted that the status quo has been to collect contributions at the time of the construction certificate, which has been established practice for many years.⁵⁰
- Mr Michael Gadiel of NSW Treasury explained the bill does not change timing as both state and local infrastructure contributions are levied at the construction certificate stage under the current system.⁵¹

2.14 In contrast, representatives of the housing industry insisted that it was more appropriate for the payment to be made as part of the process for obtaining the occupation certificate.⁵²

- Mr Tom Forrest, Chief Executive Officer of Urban Taskforce Australia, emphasised that the construction certificate stage is the time of peak debt for a developer, and imposing the charge at that point could create a disincentive for supply.⁵³
- Urban Taskforce Australia acknowledged that while levying the charge at the time of occupation certificate would affect the timing of revenue flow for the State Government, it nonetheless was of the view that it outweighed the disadvantage to housing supply that would otherwise result.⁵⁴

2.15 At the hearing, Ms Geraldine Carter of NSW Treasury told the committee that requiring the charge to be paid at the time of construction certificate, as recommended by the NSW Productivity Commissioner's review, had been well-signalled to developers:

... 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

⁴⁷ Submission 16, Willoughby City Council, p 2.

⁴⁸ Submission 21, Northern Sydney Regional Organisation of Council, p 2.

⁴⁹ Submission 21, Northern Sydney Regional Organisation of Council, p 2.

⁵⁰ Evidence, Mr Greg New, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia, 8 June 2023, p 27.

⁵¹ Evidence, Mr Michael Gadiel, Executive Director, Centre for Economic Evidence, NSW Treasury, 8 June 2023, p 47.

⁵² Submission 2, Urban Taskforce Australia, p 3; Submission 14, Urban Development Institute of Australia (NSW), p 3; Submission 20, Property Council of Australia, p 2.

⁵³ Evidence, Mr Tom Forrest, Chief Executive Officer, Urban Taskforce Australia, 8 June 2023, p 32.

⁵⁴ Submission 2, Urban Taskforce Australia, p 3.

development becomes unfeasible, it's not because of these infrastructure contribution changes; it's because, at the margin, that development is unfeasible.⁵⁵

2.16 Mr Greg New of the Planning Institute of Australia had a similar view, explaining to the committee that while there was uncertainty around other aspects of the bill:

...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.⁵⁶

Implementation period

2.17 There was some discussion of the bill's implementation period, with the scheme due to commence on 1 October 2023 should the bill successfully pass through both Houses. However, it allows for a gradual transition to the new infrastructure contribution, with discounts on the contribution applied over a two-year transition period. Stakeholder views on the implementation date included:

- The Property Council of Australia was supportive of the phased approach to implementation of the new contribution scheme as set out in the bill.⁵⁷
- Urban Taskforce Australia argued that given their concerns about the bill's effect on the current housing crisis, the initial implementation should be postponed for 12 months until 1 October 2024, with the phase-in periods to also be retained.⁵⁸
- Urban Development Institute of Australia (NSW) called for a minimum three-year transition period to 100% of the contribution to ensure that feasibility is not materially impacted and that industry is adequately prepared.⁵⁹ This view on the three-year transition was shared by Crase Developments Pty Ltd to ensure that existing industry agreements are not disrupted.⁶⁰

Interaction of the scheme with local councils

2.18 The committee heard from local government representatives on the way in which the housing and productivity contribution scheme would interact with existing local council practices, including their collection of local infrastructure contributions, the availability of grant allocations as announced by the Minister, as well as the desire for councils to be part of ongoing consultation.

⁵⁵ Evidence, Ms Geraldine Carter, Acting Executive Director, Markets and Regulation, NSW Treasury, 8 June 2023, p 44.

⁵⁶ Evidence, Mr Greg New, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia, 8 June 2023, p 28.

⁵⁷ Submission 20, Property Council of Australia, p 5.

⁵⁸ Submission 2, Urban Taskforce Australia, p 4.

⁵⁹ Submission 14, Urban Development Institute of Australia (NSW), p 3.

⁶⁰ Submission 8, Crase, p 1.

Relationship with local infrastructure contributions

- 2.19** Local infrastructure contributions under sections 7.11 and 7.12 of the *Environmental Planning and Assessment Act 1979* are charged by councils when new development is to occur. In the second reading speech, the Minister emphasised that the new scheme will not impact the local infrastructure contributions currently paid to councils. The bill does, however, provide for an additional \$1 billion over the next 10 years to be provided to councils in grant funding in order to 'deliver larger and better local infrastructure, such as regional parks and sporting facilities'.⁶¹
- 2.20** Local Government NSW and a number of councils expressed their in principle support for the bill, largely because the bill leaves intact the current arrangement concerning local infrastructure contributions.⁶² At the hearing, the Northern Sydney Regional Organisation of Councils expressed the need for assurance that the bill would present no risk to local infrastructure contributions, especially the point at which they are collected.⁶³
- 2.21** Woollahra Municipal Council argued that housing and productivity contributions should be approached in a similar way to that of local infrastructure contributions, in that they should be paid directly to the council to ensure they are spent on local projects. In its submission, the Council argued that the levies collected as part of the housing and productivity contribution should not be allocated through NSW Cabinet and the Government Coordination Group but paid to local councils to ensure it is spent on projects of benefit to the local community.⁶⁴

Other issues at the local government level

- 2.22** Other issues raised by representatives of local government included:
- the provision of \$1 billion in grant funding by the State government over the next 10 years, to fund local infrastructure.⁶⁵ While this funding was welcomed by some councils,⁶⁶ Local Government NSW called for more information on how the grant process will work, including criteria and funding priorities.⁶⁷
 - the need for ongoing consultation,⁶⁸ with Hornsby Shire Council arguing that councils should not only be part of the Urban Development Program but also be included on

⁶¹ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

⁶² Submission 5, City of Sydney Council, p 1; Submission 17, Local Government NSW, p 3.

⁶³ Evidence, Mr Steven Head, Chair of NSROC General Managers Advisory Committee, 8 June 2023, p 9.

⁶⁴ Submission 3, Woollahra Municipal Council, p 2.

⁶⁵ Paul Scully, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

⁶⁶ Submission 11, Southern Sydney Regional Organisation of Councils, p 2.

⁶⁷ Submission 17, Local Government NSW, p 7.

⁶⁸ Submission 17, Local Government NSW, p 8; Evidence, Mr Steven Head, Chair of NSROC General Managers Advisory Committee, 8 June 2023, p 8.

the Urban Development Program Oversight Committee rather than its representatives being limited to Local Government NSW.⁶⁹

- the scope of ministerial discretion in relation to the allocation of funds collected. It was the view of Hornsby Shire Council that this undermined the governance arrangements elsewhere in the bill.⁷⁰ The Northern Sydney Regional Organisation of Councils similarly voiced concern that the wide scope of ministerial discretion was inconsistent with the open and transparent allocation of funds.⁷¹

Affordable housing under the scheme

2.23 This section addresses the impact of the proposed housing and productivity contribution scheme on affordable housing, including any exemptions available for community housing providers and how the proposed scheme could further support the provision of affordable housing.

2.24 Section 1.4 of the *Environmental Planning and Assessment Act 1974* defines 'affordable housing' as including 'very low income households, low income households or moderate income households'.⁷² Stakeholders explained that affordable housing is broadly defined as housing specifically built for people on very low to moderate incomes who cannot afford to rent or purchase a home in the private market. Community housing providers generally provide affordable housing for people on moderate incomes who might be defined as 'key-workers', such as those working in education, healthcare or the hospitality and retail industries. Social housing, which is housing owned by the state government, is available for people on very low incomes, including government income support payments.⁷³

Exemption of affordable housing from the contribution requirement

2.25 The bill currently also allows the Minister to set out any exemptions from the housing and productivity contribution via a Ministerial planning order.⁷⁴ In its submission to the inquiry, CHIA NSW emphasised the need to ensure that affordable housing is exempt, along with seniors housing and affordable housing delivered within mixed use schemes.⁷⁵ Because providers of affordable housing do not receive a return on the housing they build, the CHIA NSW submission argued that any contribution charged on these developments would likely act as a barrier to the delivery of this 'vital infrastructure'.⁷⁶

⁶⁹ Submission 12, Hornsby Shire Council, p 2.

⁷⁰ Submission 12, Hornsby Shire Council, p 2.

⁷¹ Submission 21, Northern Sydney Regional Organisation of Council, p 2.

⁷² *Environmental Planning and Assessment Act 1979*, s 1.4

⁷³ Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association June 2023, p 20.

⁷⁴ Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, cl 7.24.

⁷⁵ Submission 1, Community Housing Institute of Australia, p 2-3.

⁷⁶ Submission 1, Community Housing Institute of Australia, p 3.

- 2.26** However, the committee also heard from representatives of local government that there are important considerations the government should take into account when determining if seniors housing in particular should be exempt. Mr Steven Head, Chair of the Northern Sydney Regional Organisation of Councils, explained that when seniors housing is developed in an area, specific needs for services and facilities then arise for those communities, such as improving accessibility requirements.⁷⁷ Mr Head and Mr Scott Philips, Chief Executive, Local Government NSW, explained that this kind of nuance will be an important consideration for government when the feasibility of exemptions in the context of ensuring critical infrastructure is provided to communities.⁷⁸
- 2.27** The exemption for social and affordable housing was confirmed by the Minister for Planning and Public Spaces, the Hon. Paul Scully MP, at the hearing, who told the committee that:

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.⁷⁹

Can and will contributions be spent on affordable housing?

- 2.28** As drafted, the bill would enable funds raised via the housing and productivity contribution to be spent on affordable housing as a form of 'regional infrastructure' – an inclusion for which there was strong industry support.⁸⁰ However, some stakeholders within the industry explained to the committee that they had some concerns about whether or not this inclusion would actually result in contributions being used to fund affordable housing.⁸¹ Furthermore, the committee also did not receive evidence on whether the contributions can and would be used to specifically fund public and social housing.
- 2.29** Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW, stated that: 'I'm not necessarily confident that funding will be allocated for the affordable housing'. He did, however, note that 'it's a good start that it's mentioned in the bill'.⁸²

⁷⁷ Evidence, Mr Steven Head, Chair of NSROC General Managers Advisory Committee and General Manager Hornsby Shire Council, Northern Sydney Regional Organisation of Councils, 8 June 2023, p 12.

⁷⁸ Evidence, Mr Scott Phillips, Chief Executive, Local Government NSW, 8 June 2023, p 12, Evidence, Mr Steven Head, Chair of NSROC General Managers Advisory Committee and General Manager Hornsby Shire Council, Northern Sydney Regional Organisation of Councils, 8 June 2023, p 12.

⁷⁹ Evidence, The Hon Paul Scully MP, Minister for Planning and Public Spaces, 8 June 2023, p 54.

⁸⁰ Submission 1, Community Housing Institute of Australia, p 1, Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 17.

⁸¹ Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association June 2023, p 18.

⁸² Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association June 2023, p 18, Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 17.

- 2.30** When this was put to the Minister for Planning and Public Spaces, he told the committee that at this stage 'it is not currently Government policy that this would fund social and affordable housing via the infrastructure contributions'. The Minister explained to the committee that affordable housing is included within the definition of regional infrastructure in order to ensure decisions of future governments would not be restricted if there was a decision to spend this contribution on affordable housing.⁸³
- 2.31** However, industry representatives argued that affordable housing should be funded by the contribution once it is operating, and further, argued that this kind of infrastructure should be prioritized.⁸⁴ To support this argument and stress the importance of increased funding for affordable housing development, the Community Housing Institute for Australia NSW cited modeling by the University of NSW's City Futures Research Centre that shows that without significant investment, there will be more than 320,000 low-income households experiencing unmet housing needs by 2041.⁸⁵
- 2.32** Stakeholders explained how the interests of the community housing industry could be advanced in the context of receiving funding from the contributions scheme. The committee heard that community housing and social housing sectors must be represented on any decision-making bodies that determine what infrastructure priorities are and how funds are expended.⁸⁶
- 2.33** Another solution proposed by stakeholders was to enshrine a proportion of guaranteed funding in the legislation, to require that a certain percentage of the overall fund be allocated for affordable housing.⁸⁷
- 2.34** In its submission, CHIA NSW recommended that representatives from the Department of Communities and Justice (DCJ) must be included in the priority setting and funding allocation process, noting that DCJ is the government agency with responsibility for managing public housing. Further, it recommended that a portion of the housing and productivity contribution be allocated to the Department of Communities and Justice 'for distribution to social and affordable housing projects in the Six Cities Region' where affordable housing has been identified as a priority in the regional plan.⁸⁸

⁸³ Evidence, The Hon Paul Scully MP, Minister for Planning and Public Spaces, 8 June 2023, p 54.

⁸⁴ Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW, 8 June 2023, p 16, Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 17.

⁸⁵ Submission 1, Community Housing Institute of Australia, p 1.

⁸⁶ Submission 1, Community Housing Institute of Australia, p 3.

⁸⁷ Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW, 8 June 2023, p 24, Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 24.

⁸⁸ Submission 1, Community Housing and Industry Association NSW, p 2.

Issues regarding the scope of regions included in the scheme

2.35 This section highlights concerns raised about the classification of regions in the context of the proposed new scheme. It is proposed that the housing and contributions scheme will apply to all local government areas located within the following four regions across New South Wales:

- Greater Sydney
- Illawarra-Shoalhaven
- Lower Hunter
- Central Coast.⁸⁹

2.36 As discussed in chapter 1, contributions will only be able to be spent in the region they are collected from.⁹⁰

Size of the regions

2.37 Nearly all stakeholders told the committee that the regions established by the scheme are too large, specifically the region of Greater Sydney.⁹¹ It was argued by many stakeholders that contributions arising from development in one area could be spent in another area within the region, but with no 'nexus' to where the funds were collected.⁹²

2.38 On this issue, the City of Ryde told the committee that there is a community expectation that contribution funds will be spent in a way that addresses local infrastructure shortfalls, and this expectation may not be meant if the funds are spent elsewhere in a large region.⁹³ This was reiterated by the Southern Sydney Regional Organisations of Councils (SSROC), who explained that if contribution charges levied on new development in a local area are not used to supply necessary supporting infrastructure, the 'social licence' of the community will be jeopardised.⁹⁴

Recommendations for smaller regional classifications

2.39 In order to alleviate this risk and guarantee the nexus between contribution and infrastructure spend in the Greater Sydney region, SSROC recommended that the Greater Cities Commission 'six cities' model be used when classifying the Greater Sydney area. This classification divides Greater Sydney into the Eastern Harbour City, Central River City and the Western Parkland City.⁹⁵ SSROC argued that utilizing these smaller regions in Greater Sydney

⁸⁹ NSW Government, *Housing and Productivity Contribution*, May 2023, p 5.

⁹⁰ NSW Government, *Improving the infrastructure contributions system – Housing and Productivity Contribution*, <https://www.planning.nsw.gov.au/policy-and-legislation/infrastructure/infrastructure-funding/improving-the-infrastructure-contributions-system>.

⁹¹ Submission 20, City of Sydney Council, p 2, Submission 6, City of Ryde Council, p 1, Submission 11, Southern Sydney Regional Organisation of Councils, p 2, Submission 21, Northern Sydney Regional Organisation of Council, p 2.

⁹² Submission 20, City of Sydney Council, p 2.

⁹³ Submission 6, City of Ryde Council, p 1.

⁹⁴ Submission 11, Southern Sydney Regional Organisation of Councils, p 2.

⁹⁵ Submission 11, Southern Sydney Regional Organisation of Councils, p 2.

would ensure that infrastructure expenditure would adequately support the infrastructure needs created by additional development and better implement the nexus principle.⁹⁶

2.40 The recommendation of utilizing smaller regions for purposes of the scheme in order to ensure a greater connection between the collection and expenditure of contributions was similarly reiterated by Northern Sydney Regional Organisation of Councils and Canterbury-Bankstown Council.⁹⁷

2.41 When appearing before the committee, Mr Steven Head, Chair of NSROC, advocated for using the NSROC regional classification for the purposes of the scheme, which would effectively be all local government areas in the northern Sydney area.⁹⁸ However, Canterbury-Bankstown Council called for an even more specific regional classification and argued that funds should be spent directly in the local government area where they have been collected, while Hornsby Council argued for the funds to be collected and spent at the district level.⁹⁹

The strategic biodiversity contributions fund

2.42 As outlined in chapter 1, the bill would establish a separate strategic biodiversity contributions fund, to be administered by the Planning Secretary. It proposes to do this by inserting a new section 7.31 into the *Environmental Planning and Assessment Act 1979*. This fund would include payments relating to the strategic biodiversity component of a housing and productivity contribution.

2.43 While a number of stakeholders supported the general principle of a separate biodiversity fund under the bill, concerns were raised about some aspects, including its interaction with the biodiversity offsets scheme, the lack of a regional nexus, and the potential implications of a number of reviews currently underway.¹⁰⁰ The issue of ensuring that monies collected as part of this fund were ethically invested was also raised by some inquiry participants.

Interaction with the biodiversity offset scheme

2.44 There was general support for the inclusion of a separate biodiversity contributions fund within the bill from the environment sector.¹⁰¹

⁹⁶ Submission 11, Southern Sydney Regional Organisation of Councils, p 2.

⁹⁷ Submission 21, Northern Sydney Regional Organisation of Councils, p 2; Submission 10, Canterbury-Bankstown Council, p 2.

⁹⁸ Evidence, Mr Steven Head, Chair of NSROC General Managers Advisory Committee and General Manager, Hornsby Shire Council, Northern Sydney Regional Organisations of Councils, 8 June 2023, p 8.

⁹⁹ Submission 10, Canterbury-Bankstown Council, p 2; Submission 12, Hornsby Shire Council, p 2.

¹⁰⁰ Evidence, Mr Jeff Angel, Director, Total Environment Centre, 8 June 2023, p 5; Evidence, Ms Maire Sheehan, Member, Nature Conservation Council Planning Working Group and Better Planning Network, 8 June 2023, p 5; Submission 4, Total Environment Centre, p 1.

¹⁰¹ Evidence, Mr Jeff Angel, Director, Total Environment Centre, 8 June 2023, p 3; Evidence, Ms Maire Sheehan, Member, Nature Conservation Council Planning Working Group and Better Planning Network, 8 June 2023, p 5.

- 2.45** The Nature Conservation Council commended the government for 'proactively including biodiversity conservation in the planning and funding of development projects'.¹⁰² The Total Environment Centre also gave its support for a clear biodiversity component in the bill, while noting the perversity in the fact that 'the larger the Strategic Biodiversity Contributions Fund, the bigger the negative impact from development'.¹⁰³
- 2.46** However, environmental stakeholders also raised concerns about the bill's biodiversity component, particularly the timing of its introduction and its interaction with the current biodiversity offset scheme. These concerns centered around two main issues:
- concerns about the underlying integrity of the offset scheme on which the fund would rely and the impact of the review of the *Biodiversity Conservation Act 2016* on this scheme, and
 - uncertainty around the rules that would apply to the fund, particularly whether funds spent would be required to have a regional nexus to where they were levied.¹⁰⁴
- 2.47** The Environmental Defenders Office similarly noted that it was not theoretically opposed to a framework that uses developer contributions as a way of funding conservation measures. However, it drew the committee's attention to the uncertainty surrounding how the bill will interact with both the State and Federal biodiversity offsets schemes.¹⁰⁵
- 2.48** The Total Environment Centre warned of the vagueness of references in clause 7.25(b) of the bill to 'plans, policies or programs' under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) as purposes to which the strategic biodiversity contributions fund may contribute.¹⁰⁶ It highlighted that these 'plans, policies or programs' may potentially not improve conservation outcomes in a region. It accordingly proposed that this clause be deleted, arguing that if there is a policy, plan or program that the Commonwealth wants included, it should be done so transparently.¹⁰⁷

Integrity of the underlying offset scheme and impact of ongoing reviews

- 2.49** A number of stakeholders raised concerns about the integrity of the biodiversity offset scheme with which the bill would interact, along with the impact of the ongoing review of the *Biodiversity Conservation Act 2016*.¹⁰⁸
- 2.50** The Environmental Defenders Office (EDO) questioned the ability of the biodiversity offsets scheme to deliver outcomes for biodiversity. The EDO also expressed 'ongoing concern' with the concept of biodiversity certification, noting it had made a submission to the review of the

¹⁰² Submission 13, Nature Conservation Council of NSW, p 2.

¹⁰³ Submission 4, Total Environment Centre, p 1.

¹⁰⁴ Submission 13, Nature Conservation Council of NSW, p 2;

¹⁰⁵ Submission 19, Environmental Defenders Office, p 2.

¹⁰⁶ Submission 4, Total Environment Centre, p 1.

¹⁰⁷ Answers to questions on notice, Total Environment Centre, received 13 June 2023.

¹⁰⁸ Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council, 8 June 2023, p 2.

Biodiversity Conservation Act 2016 on the topic.¹⁰⁹ As a result, it suggested that it may be preferable for biodiversity offsetting to be managed under a single framework, with the strategic biodiversity contributions fund to be used for additional conservation actions endorsed in a policy, plan or program.¹¹⁰

2.51 At the hearing, other environmental organizations voiced their issues with the integrity of the offsets system. Mr Jeff Angel told the committee that 'the whole offset scheme at the State and Federal level has become weaker and more distant',¹¹¹ while Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council, raised concerns about the 'significant problems' with the current biodiversity offset scheme and strategic biodiversity certification.¹¹² The same concerns applied to the Cumberland Plain Conservation Plan, which is also under review.¹¹³

2.52 These stakeholders emphasised that the outcome of the review of the *Biodiversity Conservation Act 2016* would need to be properly considered in due course.¹¹⁴

2.53 The Nature Conservation Council proposed that the strategic biodiversity contributions fund component of the bill be revisited following any reforms to the *Biodiversity Conservation Act* and the biodiversity offsets scheme.¹¹⁵ Mr Jeff Angel of the Total Environment Centre posited that the bill does not adequately lock in the results of the review and described this part of the bill as premature, given that the review may potentially find that concepts like biodiversity certification are no longer appropriate.¹¹⁶ The Environmental Defenders Office suggested delaying implementation of the new fund until the review of the Act is complete.¹¹⁷

2.54 When questioned about the timing of the bill's introduction, Mr Matt Greiss of NSW Treasury emphasised that the bill simply sought to maintain existing powers while the reviews were conducted. However, he noted that while it was his view that any recommendations from the review would be addressed:

...[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.¹¹⁸

¹⁰⁹ Submission 19, Environmental Defenders Office, p 2.

¹¹⁰ Submission 19, Environmental Defenders Office, p 8.

¹¹¹ Evidence, Mr Jeff Angel, Director, Total Environment Centre, 8 June 2023, p 7.

¹¹² Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of New South Wales Inc, 8 June 2023, p 2.

¹¹³ Submission 4, Total Environment Centre, p 1.

¹¹⁴ Submission 13, Nature Conservation Council of NSW, p 2.

¹¹⁵ Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of New South Wales Inc, 8 June 2023, p 2.

¹¹⁶ Evidence, Mr Jeff Angel, Director, Total Environment Centre, 8 June 2023, p 6.

¹¹⁷ Submission 19, Environmental Defenders Office, p 2.

¹¹⁸ Evidence, Mr Matt Greiss, Director, Planning, Industry and Environment, NSW Treasury, 8 June 2023, p 46.

2.55 Appearing before the committee, the Minister described the bill as establishing the 'funding architecture' to fund 'whatever biodiversity offsets scheme is in place at the time'.¹¹⁹

Lack of clarity and the requirement for regional nexus

2.56 On the issue of the bill's clarity, there was some confusion from stakeholders around whether there was a regional nexus requirement on biodiversity measures, known as like-for-like measures, funded by the bill's strategic fund. According to the Minister, while housing and productivity contributions must be spent in the same region, spending of the strategic biodiversity contributions fund is not required to occur within the same region the funds were collected from.¹²⁰ This was a concern for some stakeholders such as Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council, who noted at the hearing:

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 as habitat which is being destroyed.¹²¹

Similar concerns were shared by representatives from the Planning Institute of Australia, with Mr John Brockhoff, National Policy Director, telling the committee the Institute had separately advocated for biodiversity conservation measures 'to be designed to avoid first, and then, secondly, where offsetting occurs, it should be like for like to the greatest extent possible'.¹²²

2.57 At the hearing, Mr Saul Deane of the Total Environment Centre identified five categories that need to be met for a biodiversity offset to have an effect, namely offsets need to be upfront, proximate, contiguous, additional, and have proper environmental zoning.¹²³ He explained to the committee how the lack of a regional nexus for the spending of the strategic biodiversity contribution fund jeopardised the notion of it being 'proximate'. According to Mr Deane:

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

¹¹⁹ Evidence, The Hon Paul Scully MP, Minister for Planning and Public Spaces, 8 June 2023, p 55.

¹²⁰ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

¹²¹ Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council, 8 June 2023, p 3.

¹²² Evidence, Mr John Brockhoff, National Policy Director, Planning Institute of Australia, 8 June 2023, p 30.

¹²³ Evidence, Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre, 8 June 2023, p 5.

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.¹²⁴

- 2.58** The Total Environment Centre also argued that the biodiversity fund undermined the criteria of effective biodiversity offsets being upfront, due to the delaying mechanism.¹²⁵
- 2.59** Further to the issue of clarity, Mr John Brockhoff, National Policy Director, Planning Institute of Australia, noted that unlike the housing and productivity contribution, the bill does not currently specify the amount of any biodiversity contribution that might be payable on a development, along with when and how these charges would apply.¹²⁶ Similar comments were made by Mr Steve Mann, Chief Executive Officer, Urban Development Institute of Australia.¹²⁷ When asked about the issue at the hearing, Mr Matt Greiss, responded that 'at this stage, as part of the reforms, we aren't proposing any specific strategic biodiversity component charges'.¹²⁸

Ethical investment of strategic biodiversity contribution fund

- 2.60** Proposed section 7.31(8) of the bill provides that monies in the strategic biodiversity fund 'may be invested in a way that the Minister is permitted to invest money under the *Government Sector Finance Act 2018*, Part 6'.
- 2.61** The importance of ensuring that funds collected from the strategic biodiversity contribution are ethically invested was discussed during the hearing. Mr Jeff Angel of the Total Environment Centre emphasised that money that is collected as part of protecting the environment must not then be invested in 'nature-destroying developments'.¹²⁹
- 2.62** When questioned on the proposed investment strategy for the fund, representatives from NSW Treasury advised the committee that the specific strategy is not settled yet.¹³⁰ NSW Treasury later added that it is foreseeable that some money will be held as cash and some invested via TCorp (which has had an investment stewardship approach since 2015).¹³¹

¹²⁴ Evidence, Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre, 8 June 2023, p 6.

¹²⁵ Evidence, Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre, 8 June 2023, p 5.

¹²⁶ Evidence, Mr John Brockhoff, National Policy Director, Planning Institute of Australia, 8 June 2023, p 26.

¹²⁷ Evidence, Mr Steve Mann, Chief Executive Officer, Urban Development Institute of Australia, 8 June 2023, p 33.

¹²⁸ Evidence, Mr Matt Greiss, Director, Planning, Industry and Environment, NSW Treasury, 8 June 2023, p 46.

¹²⁹ Evidence, Mr Jeff Angel, Director, Total Environment Centre, 8 June 2023, p 7.

¹³⁰ Evidence, Ms Cass Wilkinson, Executive Director, Transport, Infrastructure, Investment, Planning and Regions, NSW Treasury, 8 June 2023, p 47.

¹³¹ Answers to questions on notice, NSW Treasury, received 13 June 2023, p 2.

Committee comment

- 2.63** The Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 proposes to introduce a housing and productivity contribution scheme that facilitates the provision of regional infrastructure, alongside a strategic biodiversity contribution fund.
- 2.64** The committee heard from various stakeholders, including councils, environmental groups, representatives from the housing and construction industry, Treasury and the Department of Planning about the various aspects of the bill and its potential impact.
- 2.65** It is clear to the committee that most stakeholders are generally supportive of the bill as a means of implementing the recommendations of the 2020 Productivity Commission review and view it as an improvement on the reforms that were attempted in 2021. Nonetheless, a number of stakeholders raised concerns about some aspects of the bill.
- 2.66** We understand that some stakeholders, particularly those within the housing and construction sector, have concerns about the potential dampening of housing supply should a housing and productivity contribution be introduced. While the committee acknowledges these fears, especially when there is already a shortage of housing, we note that the reforms proposed by the bill have been well-flagged to the relevant stakeholders for a number of years. Moreover, we believe the surrounding infrastructure that the bill proposes to fund is a necessity for any development.
- 2.67** A major point of contention was whether the housing and productivity contribution should be levied prior to a construction certificate being issued, or at the stage of the occupation certificate. The committee understands that the difference between these two stages can be in the vicinity of a few years, and so it becomes a matter of whether government or developers should bear the not insignificant cost until expenditure is recouped.
- 2.68** The committee received much evidence about the importance of ensuring that infrastructure does not lag behind development, so that it is ready for when residents move in. The matter of ensuring that the social licence is maintained and respected is critical, as communities commonly agree to extra density or housing on the understanding that there will be improvements and additions to local infrastructure. We also note evidence that the requirement to pay contribution charges currently occurs at the time of construction certificate issuance, and that this bill simply continues existing practice. For this reason, the committee feels it is most appropriate for the housing and productivity contribution to be made prior to the issue of the construction certificate.
- 2.69** The committee also acknowledges the extent to which the support of the local government sector for the bill is based on it not interfering with local councils' ability to levy local contributions under section 7.11 and 7.12. We support the continuation of this practice.
- 2.70** The committee was pleased to hear that the community and affordable housing sectors were generally in favour of the scheme proposed in the bill. These stakeholders were particularly supportive of affordable housing being included within the definition of regional infrastructure for the purposes of the bill, meaning that development contributions can be used to address the affordable housing shortage. Given that affordable housing does not

include social and public housing, the committee is of the view that it would be beneficial to specifically include public and social housing for the purposes of the fund.

- 2.71** However, these stakeholders questioned whether funds will in practice be allocated to affordable housing, including social and public housing, and how this infrastructure will be prioritised. The Minister confirmed these concerns by noting that at this stage, contributions will not be used to fund affordable housing. The committee stresses the need to ensure funding for this essential infrastructure is made available through contributions raised via this scheme in order to provide affordable housing, particularly in the midst of a housing crisis.
- 2.72** The committee appreciated the Minister's confirmation that the housing and productivity contribution will not be applied to affordable housing developments. This is an important requirement given the fact that these types of housing providers are not able to recoup the costs of development from tenants, meaning that any additional charges would have a significant impact on their ability to provide additional affordable housing. However, the committee also stresses that this exemption should be monitored, to ensure it does not allow the perverse outcome of 'double-dipping' by developers who may already be benefitting from incentives intended to encourage them to construct this form of housing.
- 2.73** The committee acknowledges the input of a number of local councils into this inquiry and appreciates their thoughtful and insightful contributions.
- 2.74** The committee notes that many of these councils identified concerns about the size of the regions being used for the purposes of the scheme, with specific concerns being raised about the breadth of the Greater Sydney region.
- 2.75** The committee is of the view that concerns about the Greater Sydney region are valid. This is due to the importance of ensuring there is a real nexus between the needs created by additional development and the infrastructure that will be funded by development contributions. This nexus could be put at risk in the context of a broad and diverse region such as Greater Sydney.
- 2.76** The committee supports the arguments made by the local councils in this regard and urges the Department of Planning and Environment to ensure consultation with local government on this issue is ongoing.
- 2.77** A separate biodiversity contributions fund is established by the bill. The committee recognises that while stakeholders generally supported the principle behind the creation of this fund, a number of concerns were raised about reviews of biodiversity legislation currently in progress that may impact this aspect of the bill. The committee acknowledges that the Minister for Planning and Public Spaces has indicated that the bill is policy neutral and will not lock in current settings. However, the committee stresses that it is important that the strategic biodiversity contributions fund remains relevant and able to incorporate any changes following the completion of the relevant reviews. It is also essential that the monies collected as part of this fund are invested in an ethical manner, in line with the purposes of environmental protection.
- 2.78** A number of stakeholders voiced their concern about the present biodiversity offset scheme. It is also vital that any outcomes resulting from the current reviews at both the state and

federal level work to ensure the integrity of the scheme. This will in turn enable the strategic biodiversity contributions fund proposed by the bill to work most effectively.

- 2.79** Accordingly, the committee refers the bill back to the House and recommends that it proceed to debate the Environment Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Recommendation 1

That the Legislative Council proceed to debate the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Appendix 1 Rates of contribution charges

Region	Land use	Contribution
Greater Sydney	Detached and semi-detached houses	\$12,000 per dwelling or lot
Greater Sydney	All other residential accommodation (including residential flat buildings and units)	\$10,000 per dwelling or lot
Greater Sydney	Industrial use	\$15 per square metre of new gross floor area for an industrial use
Greater Sydney	Commercial use	\$30 square metre of new gross floor area
Greater Sydney	Retail use	\$30 per square metre of new gross floor area
Illawarra, Shoalhaven, Central Coast and lower Hunter	Detached and semi-detached houses	\$8,000 per dwelling or lot
Illawarra, Shoalhaven, Central Coast and lower Hunter	All other residential accommodation (including residential flat buildings and units)	\$6,000 per dwelling or lot
Illawarra, Shoalhaven, Central Coast and lower Hunter	Industrial use	\$15 per square metre of new gross floor area for an industrial use
Illawarra, Shoalhaven, Central Coast and lower Hunter	Commercial use	\$30 square metre of new gross floor area
Illawarra, Shoalhaven, Central Coast and lower Hunter	Retail use	\$30 square metre of new gross floor area

¹ The Hon Paul Scully MP, Minister for Planning and Public Spaces, Second reading speech: Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023, 23 May 2023.

Appendix 2 Submissions

No.	Author
1	Community Housing Industry Association NSW
2	Urban Taskforce
3	Woollahra Municipal Council
4	Total Environment Centre
5	City of Sydney Council
6	City of Ryde Council
7	Independent Pricing and Regulatory Tribunal NSW
8	Cruse
9	Sutherland Shire Council
10	Canterbury Bankstown Council
11	Southern Sydney Regional Organisations of Councils (SSROC)
12	Hornsby Shire Council
13	Nature Conservation Council of NSW
14	Urban Development Institute of Australia - NSW Division
15	Georges River Council
16	Willoughby City Council
17	Local Government NSW
18	NSW Productivity Commission
19	Environmental Defenders Office
20	Property Council of Australia
21	Northern Sydney Regional Organisation of Councils (NSROC)
22	Shelter NSW

Appendix 3 Minutes

Minutes no. 1

Wednesday 31 May 2023

Portfolio Committee No. 7 – Planning and Environment

Room 1043 at 1.16 pm

1. Members present

Mr Buttigieg
Mr D'Adam
Mr Farlow
Ms Higginson
Ms Munro
Mr Primrose
Mr Ruddick

2. Tabling of resolution establishing the committee

The Clerk tabled the resolution of the House establishing the committee, which reads as follows:

That, notwithstanding anything to the contrary contained in the standing orders:

Appointment

1. Eight portfolio committees reflecting government ministers' portfolio responsibilities be appointed as follows:
 - (a) **Portfolio Committee No. 1 – Premier and Finance**
Premier
Treasurer
Finance, Natural Resources
Industrial Relations, Work Health and Safety
The Legislature
Aboriginal Affairs and Treaty, Gaming and Racing, Veterans, the Central Coast, Medical Research
 - (b) **Portfolio Committee No. 2 – Health**
Health, Regional Health, the Illawarra and the South Coast
Water, Housing, Homelessness, Mental Health, Youth, the North Coast
 - (c) **Portfolio Committee No. 3 – Education**
Education and Early Learning, Western Sydney
Skills, TAFE, Tertiary Education, the Hunter
 - (d) **Portfolio Committee No. 4 – Regional NSW and Communities**
Agriculture, Regional New South Wales, Western New South Wales
Small Business, Lands and Property, Multiculturalism, Sport
 - (e) **Portfolio Committee No. 5 – Justice**
Attorney General
Police and Counter Terrorism
Families and Communities, Disability Inclusion
Women, Seniors, Prevention of Domestic Violence and Sexual Assault

- (f) **Portfolio Committee No. 6 – Transport and the Arts**
Transport
Special Minister of State, Roads, Arts, Music and the Night-time Economy, Jobs and Tourism
Regional Transport and Roads
- (g) **Portfolio Committee No. 7 – Planning and Environment**
Climate Change, Energy, the Environment, Heritage
Planning and Public Spaces
- (h) **Portfolio Committee No. 8 – Customer Service**
Local Government
Customer Service and Digital Government, Emergency Services, Youth Justice
Better Regulation and Fair Trading, Industry and Trade, Innovation, Science and Technology, Building, Corrections.

Referral of inquiries

2. A committee:
 - (a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House, and
 - (b) may self-refer an inquiry into any matter relevant to the public administration of portfolios allocated to the committee.
3. A committee meeting to consider a self-reference under paragraph (2)(b) must be convened at the request of any three committee members in writing to the Committee Clerk.
4. The Committee Clerk must convene a meeting within seven calendar days of the receipt of the request, providing that members are given at least 24 hours' notice.
5. A majority of committee members is required to adopt the self-reference.
6. Whenever a committee resolves to self-refer a matter, the terms of reference are to be reported to the House on the next sitting day.

Membership

7. Each committee is to consist of seven members, comprising:
 - (a) three government members,
 - (b) two opposition members, and
 - (c) two crossbench members.

Chair and Deputy Chair

8. The committee is to elect the Chair and Deputy Chair in accordance with the standing orders.
9. The Chair of the committee is to be a non-government member.

Conduct of the committee proceedings

10. Unless the committee decides otherwise:

- (a) all inquiries are to be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales,
- (b) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
- (c) attachments to submissions are to remain confidential,
- (d) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
- (e) the sequence of questions to be asked at hearings is to alternate between opposition, crossbench and government members, in that order, with equal time allocated to each,
- (f) transcripts of evidence taken at public hearings are to be published,
- (g) supplementary questions are to be lodged with the Committee Clerk within two business days, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness,
- (h) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration, and
- (i) media statements on behalf of the committee are to be made only by the Chair.

3. Election of Chair

The Committee Clerk called for nominations for the Chair.

Mr D'Adam moved: That Ms Higginson be elected Chair of the committee.

There being no further nominations, the Clerk declared Ms Higginson elected Chair.

4. Election of Deputy Chair

Ms Higginson took the Chair.

The Chair called for nominations for Deputy Chair.

Mr D'Adam moved: That Mr Ruddick be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Mr Ruddick elected Deputy Chair.

5. Briefing on the resolution establishing the committee and conduct of committee proceedings

The Committee Clerk provided a briefing to committee members on the resolution establishing the committee and conduct of committee proceedings.

6. Conduct of committee proceedings

The Committee noted the Broadcast of Proceedings resolution (as amended by the Legislative Council on 19 October 2022), in particular the provisions relating to the filming, broadcasting, rebroadcasting and photography of committee proceedings, including:

7. 4) That unless resolved otherwise by a committee, this House authorises:

- (a) the filming, broadcasting and photography of members and witnesses in committee proceedings:
 - (i) by representatives of media organisations, including from around the committee meeting table,

- (ii) by any member of the public, from the position of the audience, and
- (b) the rebroadcasting of committee proceedings on the Legislative Council and Parliament's social media channels.

8. Publication of minutes of the first meeting

Resolved, on the motion of Mr D'Adam That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members.

9. Correspondence

The committee noted the following items of correspondence:

Received

- 14 February 2023 – Letter from the Hon James Griffin MP, Minister for Environment and Heritage, to the Clerk of the Parliaments, providing government response to the report on the *Integrity of the NSW Biodiversity Offsets Scheme*.
- 21 February 2023 – Email from an individual to committee, raising concerns about the installation of a 5G tower in their suburb.
- 22 February 2023 – Email from an individual to committee, raising concerns about the installation of a 5G tower in their suburb.
- 23 February 2023 – Email from an individual to committee, raising concerns about the installation of a 5G tower in their suburb.
- 16 March 2023 – letter from the Chief Commissioner, Independent Commission Against Corruption, acknowledging receipt of the Committee's referral of its report and transcripts of the inquiry into allegations of impropriety against agents of the Hills Shire Council and property developers in the region.

Sent

- 2 March 2023 – letter to the Chief Commissioner, Independent Commission Against Corruption, referring the report and transcripts of the inquiry into allegations of impropriety against agents of the Hills Shire Council and property developers in the region.

10. Inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023

10.1 Terms of reference

The committee noted the following terms of reference referred by the House on 30 May 2023:

That:

- (a) the provisions of the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 (not yet accompanied by a Statement of Public Interest) be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report,
- (b) the bill stand referred to the committee on receipt of the message from the Legislative Assembly forwarding the bill, the bill being read a first time and the Statement of Public Interest being tabled, and
- (c) the committee report by 27 June 2023.

10.2 Proposed timeline

Resolved, on the motion of Mr Farlow: That the committee adopt the following timeline for the administration of the inquiry:

Wednesday 7 June 2023 – closing date for submissions

Thursday 8 June 2023 – public hearing

Tuesday 20 June 2023 – circulation of chair's draft report

Friday 23 June 2023 (AM) – report deliberative

Tuesday 27 June 2023 – report tabling.

10.3 Stakeholder and witness list

Resolved, on the motion of Mr D'Adam: That members be provided with the opportunity to nominate additional stakeholders to make a submission and/or appear as a witness to give evidence by 2.00 pm Thursday 1 June and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

10.4 Post-hearing responses

The committee noted there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.

Resolved, on the motion of Ms Munro: That transcript corrections and clarifications to evidence be provided within 48 hours of the receipt of the transcript by the witness.

10.5 Pro forma submissions

Resolved, on the motion of Mr Farlow: That the committee not accept pro formas.

11. Adjournment

The committee adjourned at 1.33 pm *sine die*.

Laura Ismay

Committee Clerk

Minutes no. 2

Thursday 8 June 2023

Portfolio Committee No. 7 – Planning and Environment

Macquarie Room, Parliament House, Sydney at 8.45 am

1. Members present

Ms Higginson, Chair

Mr Ruddick, Deputy Chair

Mr Buttigieg

Mr D'Adam

Mr Farlow

Ms Munro

Mr Primrose

2. Previous minutes

Resolved, on the motion of Mr Ruddick: That draft minutes no. 1 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 5 June 2023 – Email from Professor Bill Randolph, UNSW City Futures Research Centre, to the secretariat, declining the invitation to appear at public hearing on 8 June 2023
- 5 June 2023 – Email from Ms Rachel Walmsley, Head of Policy and Law Reform, Environmental Defenders Office, to the secretariat, declining the invitation to appear at public hearing on 8 June 2023
- 6 June 2023 – Email from Mr Ben McAlpine, Acting CEO, NSW Council of Social Service, to the secretariat, declining the invitation to appear at public hearing on 8 June 2023

- 6 June 2023 – Email from Ms Christina Luong, A/Associate Director, NSW Treasury, to the secretariat, noting that the Productivity Commission will not be appearing at public hearing on 8 June 2023
- 6 June 2023 – Email from Ms Liz Crosby, Infrastructure NSW, to the secretariat, declining the invitation to appear at public hearing on 8 June 2023
- 7 June 2023 – Email from Mr Nigel Waters, Better Planning Network, to the secretariat, declining the invitation to appear at public hearing on 8 June 2023
- 7 June 2023 – Email from Ms Cathy Towers, Assistant Director Planning, Housing Industry Association, to secretariat, declining the invitation to appear at public hearing on 8 June 2023
- 7 June 2023 – Email from Mr Luke Nicholls, Director, Western Sydney Planning Partnership, to secretariat, declining the invitation to appear at public hearing on 8 June 2023.

4. Inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023

4.1. Submissions

The committee noted that submission nos. 1-3 were published by the committee clerk under the resolution appointing the committee.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission nos. 4-15.

4.2. Public hearing

Resolved, on the motion of Mr Farlow: That witnesses be requested to return answers to questions on notice by 5.00 pm Tuesday 13 June 2023.

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room and via videolink.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council
- Ms Maire Sheehan, Member, Nature Conservation Council Planning Working Group and Better Planning Network
- Mr Jeff Angel, Director, Total Environment Centre (via videoconference)
- Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre (via videoconference).

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submissions nos. 16-19.

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room.

The following witnesses were sworn and examined:

- Mr Scott Phillips, Chief Executive, Local Government NSW
- Mr Steven Head, Chair of NSROC General Managers Committee and General Manager Hornsby Shire Council, Northern Sydney Regional Organisation of Councils.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW
- Mr John Engeler, Chief Executive Officer, Shelter NSW.

Mr Engeler tendered the following document:

- Shelter NSW, *NSW Regional Housing Need Report*, 2021.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Greg New, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia (via videoconference)
- Mr John Brockhoff, National Policy Director, Planning Institute of Australia.

The evidence concluded and the witnesses withdrew

The public and the media withdrew.

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission no. 20.

The committee proceeded to take evidence in public.

Witnesses were admitted to the hearing room.

The following witnesses were sworn and examined:

- Mr Ross Grove, Acting ACT Executive Director, Property Council of Australia
- Mr Michael Player, Acting NSW Deputy Executive Director, Property Council of Australia
- Mr Steve Mann, Chief Executive Officer, Urban Development Institute of Australia
- Mr Tom Forrest, Chief Executive Officer, Urban Taskforce of Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Geraldine Carter, Executive Director, Markets and Regulation, NSW Treasury
- Mr Michael Gadiel, Executive Director, Centre for Economic Evidence, NSW Treasury
- Ms Cass Wilkinson, Executive Director, Transport, Infrastructure, Investment, Planning and Regions, NSW Treasury
- Mr Matt Greiss, Director, Planning, Industry and Environment, NSW Treasury.

The evidence concluded and the witnesses withdrew

The following witnesses were sworn and examined:

- Mr Marcus Ray, Deputy Secretary, NSW Planning, Department of Planning and Environment
- Mr Jonathon Schipp, Executive Director, Infrastructure Policy, Department of Planning and Environment
- Ms Felicity Greenway, Acting Deputy Secretary, Planning and Policy, Department of Planning and Environment.

The following witness was examined:

- The Hon Paul Scully MP, Minister for Planning and Public Spaces.

The evidence concluded and the witnesses withdrew

The hearing concluded at 4.33 pm. The public and the media withdrew.

4.3. Tendered documents

Resolved, on the motion of Ms Munro: That the committee accept and publish the following document(s) tendered during the public hearing:

- Shelter NSW, *NSW Regional Housing Need Report*, 2021.

5. Adjournment

The committee adjourned at 4.35 pm until Friday 23 June.

Talina Drabsch
Committee Clerk

Draft minutes no. 3

Friday 23 June 2023

Portfolio Committee No. 7 – Planning and Environment

Room 1043, Parliament House Sydney, 10.00 am

1. Members present

Ms Higginson, Chair
 Mr Ruddick, Deputy Chair
 Mr Buttigieg
 Mr D'Adam (via videoconference)
 Mr Farlow
 Ms Munro
 Mr Primrose

2. Previous minutes

Resolved, on the motion of Mr Primrose: That draft minutes no. 2 be confirmed.

3. Correspondence

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of correspondence from Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association to secretariat, regarding clarification of evidence, dated 13 June 2023.

4. Inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023

4.1. Submissions

The committee noted that submissions 9 (updated), 21 and 22 were published by the committee clerk under the authorisation of the resolution appointing the committee.

4.2. Answers to questions on notice

The committee noted the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Michael Carnuccio, Senior Policy Advisor, Community Housing Industry Association NSW, received 13 June 2023
- answers to questions on notice from Mr Tom Forrest, Chief Executive Officer, Urban Taskforce, received 13 June 2023
- answers to questions on notice from Department of Planning, received 13 June 2023
- answers to questions on notice from Mr Jeff Angel, Director, Total Environment Centre, received 13 June 2023
- answers to questions on notice from NSW Treasury, received 13 June 2023.

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of additional information from Mr Michael Player, Acting NSW Deputy Executive Director, Property Council of Australia, received 13 June 2023.

4.3. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Farlow: That paragraph 1.4 be amended by inserting 'then' before 'Government accepted all 29 recommendations'.

Mr Farlow moved: That the following new paragraph be inserted after paragraph 1.4:

'The Government has indicated to the committee that they are not progressing seven of the Productivity Commissioner's recommendations. Footnote: NSW Treasury, Answers to Questions on Notice, 8/6/2023.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 1.12 be amended by inserting 'In 10 years time,' before 'when fully operational'

[FOOTNOTE: Evidence, Mr Matt Greiss, Director, Planning, Industry and Environment, NSW Treasury, 8 June 2023, p 49].

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 1.19 be omitted: 'Further, the HAP Fund will target projects that relate to strategic planning priorities, which include: meeting housing targets, delivering projects in a reasonable time and ensuring projects are aligned to growth infrastructure plans. Specifically, in order for money to be paid out of the fund to support a project, it must be in either a State strategic plan or the State Infrastructure Strategy', and the following new paragraph be inserted instead:

'In order for money to be paid out of the fund to support a project, it must be in either a State strategic plan or the State Infrastructure Strategy. The HAP Fund will target projects that relate to strategic planning priorities, which include: meeting housing targets, delivering projects in a reasonable times and ensuring projects are aligned to growth infrastructure plans.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That the following new paragraph be inserted after paragraph 2.3:

'However, concerns were raised about the dampening effect the Bill would have on housing supply. When asked whether the Bill in its current form would help deliver 314,000 homes in the next five years, Mr Forrest replied "that in its current form, it would not."'

[FOOTNOTE: Evidence, Mr Tom Forrest, Chief Executive Officer, Urban Taskforce Australia, 8 June 2023, p 33].

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That the following new paragraph be inserted after paragraph 2.6:

'Mr Greg New of the Planning Institute of Australia estimated that \$700 million (as expected to be generated annually by the Fund in 10 years' time), would allow the Government to build a two- to four-kilometre sub-arterial roadway in Western Sydney.

[FOOTNOTE: Evidence, Mr Greg New, Infrastructure Funding and Delivery Consultant, Planning Institute of Australia, 8 June 2023, p 30.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That the following new paragraphs be inserted after paragraph 2.11:

'The City of Sydney Council submitted that they had raised concerns about the feasibility of the previous proposal and highlighted flaws in the feasibility analysis undertaken as part of that process. Further, they requested that the modelling the Minister referred to in his second reading speech and any modelling on the phase-in should be released publicly.

[FOOTNOTE: Submission 5, City of Sydney Council, p 3]

At the hearing, Ms Geraldine Carter of NSW Treasury told the committee that the feasibility modelling had not been updated since the Productivity Commissioner's review of the New South Wales infrastructure contributions system in 2020:

“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.”

[FOOTNOTE: Evidence, Ms Geraldine Carter, Acting Executive Director, Markets and Regulation, NSW Treasury, 8 June 2023, p 43.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Farlow: That paragraph 2.13 be amended by omitting 'the housing and productivity contribution' and inserting instead 'contributions'.

Mr Farlow moved: That paragraph 2.13 be amended by inserting the following bullet points at the end:

- 'Mr Scott Phillips of Local Government NSW expressed that it was a matter for the State when State contributions under this Bill were to be collected, so long as no changes were made to the collection of Local Government contributions'.
[FOOTNOTE: Evidence, Mr Scott Phillips, Chief Executive Officer, Local Government NSW, 8 June 2023, p 13.]
- 'Mr Gadiel also explained that the NSW Productivity Commission's 2020 review "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"'.
[FOOTNOTE: Evidence, Mr Michael Gadiel, Executive Director, Centre for Economic Evidence, NSW Treasury, 8 June 2023, p 43.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.14 be amended by inserting the following bullet points at the end:

- 'Urban Development Institute of Australia – NSW Division argued that levying the contribution at the stage of Occupation Certificate rather than construction commencement would improve cash flow during the current housing supply crisis'.
[FOOTNOTE: Submission 14, Urban Development Institute of Australia - NSW Division, p 4.]
- 'The Property Council of Australia recommended that the Productivity Commission's original recommendation should be followed to remove barriers to project feasibility in the Bill by deferring payment of all contributions to the occupation certificate stage'.
[FOOTNOTE: Submission 20, Property Council of Australia, p 3.]
- 'Urban Taskforce estimates that borrowing to pay the HAP contribution on 1,000 apartments (a \$10 million contribution fee) at the time of issuing a construction certificate would incur an additional cost of \$5.64 million of monthly compound interest, and \$6.77 million in additional cost for detached dwellings, on top of the \$12 million contribution fee'.
[FOOTNOTE: Answers to questions on notice, Urban Taskforce, 13 June 2023.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraphs 2.15 and 2.16 be omitted:

'At the hearing, Ms Geraldine Carter of NSW Treasury told the committee that requiring the charge to be paid at the time of construction certificate, as recommended by the NSW Productivity Commissioner's review, had been well-signalled to developers:

... 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 changes; it's because, at the margin, that development is unfeasible.

Mr Greg New of the Planning Institute of Australia had a similar view, explaining to the committee that while there was uncertainty around other aspects of the bill:

...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.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That the following new paragraph be inserted after paragraph 2.16: 'It is noted that the majority of developments in NSW currently incur no contribution fee paid to the State Government under the SIC scheme.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 2.19 be amended by:

- a) omitting 'provide for an additional \$1 billion' and inserting instead 'provide for \$1 billion'
- b) inserting at the end: 'The Minister confirmed that up to \$1 billion would be taken from the HAP Fund over 10 years to fund this announcement.'

[FOOTNOTE: Evidence, The Hon. Paul Scully MP, Minister for Planning and Public Spaces, 8 June 2023, p 52.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That the following new paragraph be inserted after paragraph 2.21:

'The Sutherland Shire Council raised concerns that this Bill would make developments less financially viable, risk adding to the housing affordability pressures and result in fewer fees collected directly by local government. The Council explained that developers may place pressure on local governments to cost shift contribution fees away from local government and towards state government, to ensure developments remain financially viable.'

[FOOTNOTE: Submission 9, Sutherland Shire Council, p 2.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 2.22 be amended by inserting the following bullet point at the end:

- 'LGNSW noted that they welcomed the Bill "primarily on the basis that it does not in any way change the settings for the local collection of infrastructure contributions".'
[FOOTNOTE: Evidence, Mr Scott Phillips, Chief Executive, Local Government NSW, 8 June 2023, p 11.]

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 2.28 be omitted:

'As drafted, the bill would enable funds raised via the housing and productivity contribution to be spent on affordable housing as a form of 'regional infrastructure' – an inclusion for which there was strong industry support.¹³² However, some stakeholders within the industry explained to the committee that they had some concerns about whether or not this inclusion would actually result in contributions being used to fund affordable housing.¹³³ Furthermore, the committee also did not receive evidence on whether the contributions can and would be used to specifically fund public and social housing',

and the following new paragraph be inserted instead:

'As drafted, the bill would enable funds raised via the housing and productivity contribution to be spent on affordable housing as a form of 'regional infrastructure' – an inclusion for which there was strong industry support.⁸⁰ However, the committee did not receive evidence on whether the contributions can and would be used to specifically fund public and social housing. Some stakeholders within the industry explained to the committee that they had some concerns about whether or not this inclusion would actually result in contributions being used to fund affordable housing.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Ms Munro moved: That paragraph 2.29 be amended by inserting at the end: 'Mr Carnuccio noted that having 10 per cent of HAP allocated to affordable housing would be a good starting point for delivery in line with the Greater Cities Commission precinct-based targets.'

[FOOTNOTE: Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association NSW, 8 June 2023, p 24.]

¹³² Submission 1, Community Housing Institute of Australia, p 1, Evidence, Mr John Engeler, Chief Executive Officer, Shelter NSW, 8 June 2023, p 17.

¹³³ Evidence, Mr Michael Carnuccio, Senior Policy Officer, Community Housing Industry Association June 2023, p 18.

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Farlow: That paragraph 2.41 be amended by inserting at the end: 'while Hornsby Council argued for the funds to be collected and spent at the district level'. [FOOTNOTE: Submission 12, Hornsby Shire Council, p 2.]

Mr Farlow moved: That paragraph 2.66 be amended by omitting 'potential dampening of housing supply' and inserting instead 'ability to deliver more housing'.

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.66 be amended by omitting 'While the committee acknowledges these fears, especially when there is already a shortage of housing, we note that the reforms proposed by the bill have been well-flagged to the relevant stakeholders for a number of years. Moreover, we believe the surrounding infrastructure that the bill proposes to fund is a necessity for any development' after 'a housing and productivity contribution be introduced'.

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Farlow: That paragraph 2.67 be amended by omitting 'it becomes a matter of whether councils or developers' and inserting instead 'it becomes a matter of whether government or developers'.

Mr Farlow moved: That paragraph 2.68 be amended by omitting 'and that this bill simply continues existing practice. For this reason, the committee feels it is most appropriate for the housing and productivity contribution to be made prior to the issue of the construction certificate' and inserting instead 'and that the Productivity Commissioner's review on infrastructure contributions recommended the deferral of infrastructure contributions to the occupation certificate stage.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.69 be amended by omitting 'We support the continuation of this practice' after 'ability to levy local contributions under section 7.11 and 7.12'.

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That the following new paragraph be inserted after paragraph 2.69:

'7.26 (d) of the Bill allows for the Ministerial planning order to specify "the time at which the housing and productivity contribution is required", the committee recommends that this order apply the housing and productivity contribution at the time of occupation certificate, in line with the recommendations of the Productivity Commissioner's review, in order to address the concerns of industry about the feasibility of development if this charge is enacted at the issuance of a construction certificate, as the Government has intended.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.70 be amended by omitting 'The committee was pleased to hear that the' before 'community and affordable housing sectors were generally in favour'.

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.70 be amended by omitting 'Given that affordable housing does not include social and public housing, the committee is of the view that it would be beneficial to specifically include public and social housing for the purposes of the fund' and inserting instead 'However, it was made clear to the committee by the Government that there was no intention for the Housing and Productivity Contribution to be used for the provision or funding of affordable housing.'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Mr Farlow moved: That paragraph 2.76 be omitted 'The committee supports the arguments made by the local councils in this regard and urges the Department of Planning and Environment to ensure consultation with local government on this issue is ongoing', and the following new paragraph be inserted instead:

'The committee supports the arguments made by local councils in this regard and believes the Bill needs to be amended to define region under 7.22 to specify, "means and area of land as referred to in the Six Cities Region boundary defined under Schedule 1 of the Greater Cities Commission Act 2022".'

Question put.

The committee divided.

Ayes: Mr Farlow, Ms Munro, Mr Ruddick

Noes: Mr Buttigieg, Mr D'Adam, Ms Higginson, Mr Primrose.

Question resolved in the negative.

Resolved, on the motion of Mr Primrose: That:

- a. the draft report as amended be the report of the committee and that the committee present the report to the House;
- b. the transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry be tabled in the House with the report;
- c. upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d. upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e. the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f. the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g. dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h. the report be tabled on Monday 26 June 2023.

5. Adjournment

The committee adjourned at 10.29 am *sine die*.

Talina Drabsch
Committee Clerk

Appendix 4 Witnesses at hearings

Date	Name	Position and Organisation
Thursday 8 June 2023 Macquarie Room Parliament House, Sydney	Ms Jacquelyn Johnson	Executive Officer, Nature Conservation Council
	Ms Maire Sheehan	Member, Nature Conservation Council Planning Working Group and Better Planning Network
	Mr Jeff Angel	Director, Total Environment Centre (<i>via videoconference</i>)
	Mr Saul Deane	Urban Sustainability Campaigner, Total Environment Centre (<i>via videoconference</i>)
	Mr Scott Phillips	Chief Executive, Local Government NSW
	Mr Steven Head	Chair of NSROC General Managers Committee and General Manager Hornsby Shire Council, Northern Sydney Regional Organisation of Councils (NSROC)
	Mr Michael Carnuccio	Senior Policy Officer, Community Housing Industry Association NSW
	Mr John Engeler	Chief Executive Officer, Shelter NSW
	Mr Greg New	Infrastructure Funding and Delivery Consultant, Planning Institute of Australia
	Mr John Brockhoff	National Policy Director, Planning Institute of Australia
	Mr Ross Grove	Acting ACT Executive Director, Property Council of Australia
	Mr Michael Player	Acting NSW Deputy Executive Director, Property Council of Australia
	Mr Steve Mann	CEO, Urban Development Institute of Australia
	Mr Tom Forrest	CEO, Urban Taskforce of Australia
Ms Geraldine Carter	Executive Director, Markets and Regulation, NSW Treasury	
Mr Michael Gadiel	Executive Director, Centre for Economic Evidence, NSW Treasury	

Date	Name	Position and Organisation
	Ms Cass Wilkinson	Executive Director, Transport, Infrastructure, Investment, Planning and Regions, NSW Treasury
	Mr Matt Greiss	Director, Planning, Industry and Environment, NSW Treasury
	The Hon Paul Scully MP	Minister for Planning and Public Spaces
	Mr Marcus Ray	Deputy Secretary, NSW Planning, Department of Planning and Environment
	Mr Jonathon Schipp	Executive Director, Infrastructure Policy, Department of Planning and Environment
	Ms Felicity Greenway	Executive Director, State Policy and Strategic Advice, Department of Planning and Environment

Appendix 5 Dissenting Statements

The Hon. Scott Farlow MLC, The Hon. Jacqui Munro MLC

During the committee's consideration of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023* stakeholders raised many concerns with the Bill, which make it unsupportable in its current form.

While the Government has claimed that the Bill is reflective of the recommendations of the NSW Productivity Commission Review of Infrastructure Contributions, it is evident that the Bill does not encapsulate all recommendations. Treasury also outlined to the inquiry that they would not be progressing seven of the Productivity Commissioner's recommendations from that review.

One of those key concerns from industry related to the timing at which the housing and productivity contribution (HPC) was levied. The Productivity Commission had recommended the deferral of infrastructure charges to the occupation certificate stage, which was incorporated in the original Regional Infrastructure Contribution (RIC) proposal. The majority of the Committee has refused to acknowledge this basic fact, despite the evidence before them. No less than NSW Treasury's Executive Director, Michael Gadiel, outlined that the Productivity Commissioner's review "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".

The committee heard this has a significant impact on the ability to deliver the 314,000 additional homes New South Wales needs. This is due to the impact on feasibility, cash flow constraints and additional borrowing fees that are required to fund the HPC.

Local Government New South Wales expressed that it was a matter for the State when State contributions under the Bill were to be collected, so long as no changes were made to the collection of Local Government contributions.

It is open to the Government under 7.26 (d) of the Bill to impose the HPC at the occupation certificate stage, which the Government has indicated it will not do. It is our view that this should be the case, as it was proposed to be under the former RIC and as recommended by the Productivity Commission.

Concerns were also raised about the impact on feasibility from this Bill and thus the ability to deliver more housing, especially given most developments across New South Wales currently incur no contribution charge. This was an issue that was raised by both councils and industry, and we share their concerns. It was troubling to learn that the modelling to support the HPC had not been updated since 2020. Since that time construction costs have increased 30% and interest rates have risen by 400 basis points.

While the Bill defines regional infrastructure as including affordable housing, evidence before the committee from the Government made it clear that the HPC was not intended to provide for or fund affordable housing.

One of the arguments for this Bill is that it will provide infrastructure to support additional development in communities. Many stakeholders submitted that there needed to be a clear nexus for this to be the case and Greater Sydney was too broad a region. We believe that the definition of "region" under 7.22 should be amended in line with the Six Cities Region boundary defined under the Greater Cities Commission Act 2022.

The Hon. John Ruddick MLC

Portfolio Committee 7 discussed and considered the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023 in detail, taking witness statements from stakeholders and Government representatives.

While the early sections of the Report summarise this process in a mostly balanced way, the conclusion outlined in the Committee Comments section omits vital details, uses biased and emotive language, and introduces recommendations not brought forward by any witnesses. It also ignores recommendations made by the Productivity Commission and dismisses valid concerns presented by stakeholders.

Further, I note my opposition to the reticence of Government representatives and Committee members to refer to the contribution as a tax. A compulsory payment made to the State for an activity conducted on one's own private property is a tax, irrespective of whether the tax is hypothecated to a specific fund.

Information presented by witnesses but omitted by the Report includes:

- Evidence presented by Local Government NSW as to the stage of development the tax should be payable.
- Evidence presented by NSW Treasury as to the recommendations of the Productivity Commission about the stage of development the tax should be payable.
- Evidence presented by Hornsby Council pertaining to the level of government at which funds should be collected.
- Evidence presented by the Urban Taskforce and other stakeholders pertaining to recent and ongoing supply chain issues faced by the development and construction industries.

The most contentious issue was the stage at which the tax would be payable. Despite compelling and conciliatory arguments made by key stakeholders, the Report stunningly rejects the recommendation of the Productivity Commission to have the tax due at the Occupation Certification stage rather than the Construction Certificate stage.

Witnesses delivered testimony correctly arguing that the Bill in its current form would significantly impede the ability of the industry to address the housing supply shortage. The Report incorrectly rejects the compromise offered by stakeholders, not due to its merit, but due to the notice given to the stakeholders. Advanced notice of this flawed policy does not nullify its flaws.

The Report ignores that most developments currently incur no tax (“contributions”) and that increasing housing development costs during a housing shortage is destructive. The Bill would in fact significantly reduce the supply of housing during this crisis.

The Report also makes multiple references to social and public housing. This was not driven by stakeholders and takes an ideological stance on the issue totally removed from the reality of any historical or theoretical increase in housing supply.

In conclusion, the political concessions made by the Urban Taskforce and other development stakeholders – rejected by this Report – were not only reasonable, but excessively so. The Bill should not be supported and moreover, the standing Special Infrastructure Contribution (SIC) should also be abolished without replacement to facilitate more development and increase the supply of private housing.

