Property Council of Australia ABN 13 00847 4422
A Level 7, 50 Carrington Street, Sydney NSW 2000
T +61 2 9033 1900
E info@propertycouncil.com.au
W propertycouncil.com.au
@propertycouncil

8 June 2023

Ms Sue Higginson MLC
Portfolio Committee No. 7 – Planning and Environment
Parliament House
Macquarie Street
SYDNEY NSW 2000

PortfolioCommittee7@parliament.nsw.gov.au

Dear Committee Chair,

RE: Inquiry into the Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023

The Property Council of Australia welcomes the opportunity to make a submission to the Portfolio Committee's inquiry into the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023*.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes across NSW.

This submission outlines our conditional support for the *Housing and Productivity Contributions Bill 2023* but details the significant risks facing the future of housing supply under a disjointed and haphazard approach to infrastructure contributions reform.

For ease, the Property Council has included an overview of the key recommendations from this submission to assist the Committee in the preparation of its report to Parliament.

Recommendation: It is critical the NSW Government provide clarity on future infrastructure contributions reform pathway and specifically outline how it will progress all 29 recommendations from the Productivity Commission's 2020 review.

Recommendation: Under the Housing and Productivity Contributions Bill, the NSW Government must ensure engagement with industry and councils conducted through the Urban Development Program is genuine and truly consultative, drawing on relevant data sources to inform evidence-based infrastructure decision-making.

Recommendation: The Infrastructure Opportunity Plan should include development of a near-term (0-5 years), medium term (10-15 years), and long-term (15-20 years) pipeline of infrastructure investments aligned in structure to the Infrastructure NSW pipeline and Infrastructure Australia Priority List models. The development of any infrastructure list should operate as a true prioritisation of highest value investments that unlock and support housing supply. Further engagement with industry will also be required in the development of the infrastructure prioritisation assessment criteria.

Recommendation: The NSW Parliament should move an amendment to address current concerns around the payment of both local and regional contribution charges at the construction certificate stage. Specifically, the NSW Parliament should follow the Productivity Commission's original recommendation and remove barriers to project feasibility in the Bill by deferring payment of all contributions to the occupation certificate stage.

Recommendation: The Committee should recommend deferral of the Sydney Water DSP charges to ensure a more robust governance model and revised pricing methodology is adopted.

Recommendation: The Committee and Parliament should request further clarity from Government on the implementation of reforms to Section 7.11 and 7.12 local contributions as recommended by the Productivity Commission.

Further detailed evidence to support the above recommendations is included below.

The housing crisis in NSW

NSW is facing the worst housing shortage in a generation. As Australia embarks on a major migration program, demand for housing is surging ahead of dwelling completions. Meanwhile, escalating interest rates and construction costs are adding further pressures to the future housing pipeline.

The current housing affordability and rental crisis is also causing significant social and economic impacts leading to increased housing stress, homelessness, and the loss of talent to regional NSW and interstate.

Under the National Housing Accord, NSW will be required to build 314,000 new homes over the next five years – representing around 63,000 new homes per year. Since FY2016-17, Sydney housing approvals and completions have been trending down. Over the last four years, the average annual approvals rate has been 30,114, while the previous four-year average was 50,958 - a difference of more than 20,000 homes.

The current composition of greenfield and brownfield development is imbalanced, with completion of apartments well below the required supply target. In FY2021-22, only 13,323 apartments were completed – representing a fall of around 56 per cent from the peak in FY2017-18. Under current settings, NSW will not meet its housing supply targets in the Accord.

Increasing the charges paid by developers in this environment has the potential to significantly dampen the incentives for investment in housing stock unless a clear nexus can be demonstrated between development charges and infrastructure investment. In 2018, the Property Council commissioned *ACIL Allen Consulting* to assess the impact of property taxes and charges on new housing development. This estimated that taxes and charges represent around 26 per cent of the cost of acquiring a new house in Sydney, and 22 per cent of a new apartment. Taxes and charges on the property sector have only increased since this report was last commissioned.

Where infrastructure contributions support efficient and timely delivery of housing, the community will be more supportive of growth, and the supply of residential and commercial property will be enhanced. This was the central argument of the Productivity Commission's Infrastructure Contributions Reform Review back in 2020.

The merit of the *Housing and Productivity Contributions Bill 2023*, and all associated developer-based charges, should be tested in their alignment with this objective and the reform principles set out in the Productivity Commission's Review. As such, it is worth revisiting the principles and recommendations set out in the Review to demonstrate the risks associated with piecemeal contributions reform approach.

The Productivity Commission set out clear principles for reform

In 2020, the NSW Productivity Commission released its Final Report of the Review of Infrastructure Contributions in New South Wales.

The Review found the current infrastructure contributions system was not supporting efficient and timely delivery of infrastructure to support development. Critically, the Commission noted piecemeal changes to infrastructure contribution schemes over many years have resulted in a complex system with higher costs, less certainty, and poor transparency.

The Review made 29 recommendations, underpinned by a set of principles, setting out where infrastructure costs should be recovered from developers or landowners and where governments should rely on other sources of funding. The Productivity Commission made clear that any changes to contributions schemes needed to be guided by the following principles:

- **Certain:** certain and predictable application
- **Simple:** easy to understand and with minimum administrative costs
- **Efficient:** creation of market signals to guide efficient development
- **Transparent:** openness and accountability for contributions collection and expenditure
- **Consistent:** consistent and fair contributions, based on impactor pays and beneficiary pays principles

Based on these principles, the Productivity Commission recommended a series of priority reforms including:

- *removing the disincentive for councils to accept development and growth by allowing for the local government rate peg to reflect population growth*
- *ensuring charges can be properly factored into feasibility studies by requiring contributions plans be developed prior to rezoning*
- *introducing a direct land contribution obligation for landowners following rezoning to provide early and adequate funding for land*
- *managing costs and complexity of section 7.11 local contributions plans by using benchmark costs and focusing the role of the Independent Pricing and Regulatory Tribunal in reviewing plans*
- *removing barriers to construction and improving project feasibility by deferring payment of contributions to the occupation certificate stage*
- *providing a simpler option for councils by increasing the maximum rate of section 7.12 fixed development consent levies, in certain circumstances*
- *limiting the use of state and local planning agreements to direct delivery of works and supporting infrastructure for 'out-of-sequence' developments*

- *addressing insufficient and ad hoc section 7.24 special infrastructure contributions through implementation of modest and simple broad-based regional charges*
- *implementing an additional state contribution for rezoned properties within station service catchments*
- *transitioning to cost reflective charges for water connections*
- *making the system easier to navigate and comply with by providing and maintaining clear and rationalised guidance and comprehensive digital tools, and*
- *being more transparent in reporting on how much money is collected and where it is spent.*

The Property Council was a willing backer of this reform program, which is why we provided in-principle support for the full implementation of all 29 recommendations. The Productivity Commission's changes were designed to fix the state's broken infrastructure contributions system, facilitating streamlined development processes, and enhancing access to housing for individuals and families. Combined, these reforms to state and local contribution schemes were set to offer a $12 billion net benefit to the economy over 20 years.

Our infrastructure contributions framework still deserves the certainty, simplicity, efficiency, transparency, and consistency that the NSW Productivity Commissions reforms originally sought to deliver. Indeed, we need to ensure the contributions system in NSW is competitive with respect to other jurisdictions and does not operate as a handbrake on the state's growth.

Unfortunately, three years on from that review, we're returned to a piecemeal and haphazard approach to reform which risks saddling industry with a wave of new costs without delivering the $12 billion in benefits promised under the full package of changes.

Without a commitment from government to progress all the state and local contributions reforms as originally recommended by the NSW Productivity Commission we risk deepening the housing crisis and driving investment out of NSW.

As such, it is critical the NSW Government provide clarity on future infrastructure contributions reform pathway and specifically outline how it will progress all 29 recommendations from the Productivity Commission's review.

Housing and Productivity Contributions Bill is welcome but shouldn't be progressed in isolation

The introduction of the Productivity and Contribution Bill into Parliament seeks to reform the existing Special Infrastructure Contributions (SIC) regime applied to regional infrastructure. The package of reforms is similar to the Regional Infrastructure Contribution (RIC) changes that were proposed by the former Government and recommended by the Productivity Commission.

The Property Council provides its conditional support of the Housing and Productivity Contributions Bill. The provisions included in the Bill broadly align with the recommendations set out in the Productivity Commission's Review, however there are some critical missing elements that need to be considered given the changed economic and fiscal environment which industry now finds itself in.

The Property Council supports the growth-enabling infrastructure identified for funding under the Bill, including:

- Active Transport
- Transport
- Education
- Health
- Emergency
- Justice, and
- Open Space and Conservation.

The governance model underpinning identification and prioritisation of infrastructure investment will be critical to the ongoing support of industry, councils and community moving forward. The Property Council welcomes the government's commitment to develop an Infrastructure Opportunities Plan for each region through the Urban Development Program (UDP) model.

The Property Council's engagement with the existing UDPs and early involvement with the Western Sydney Parkland City Pilot UDP has proved promising. It is vital the engagement with industry and councils conducted through the UDP is genuine and truly consultive, drawing on relevant data sources to inform evidence-based infrastructure decision-making.

The Property Council recommends the Infrastructure Opportunity Plan include development of a near-term (0-5 years), medium term (10-15 years), and long-term (15-20 years) pipeline of infrastructure investments aligned in structure to the Infrastructure NSW pipeline and Infrastructure Australia Priority List models. The development of any Infrastructure Priority List should observe the lessons from the federal model, ensuring the list doesn't simply become a 'menu of options' and instead operates as a true prioritisation of highest value investments that unlock and support housing supply. Further engagement with industry will also be required in the development of the infrastructure prioritisation assessment criteria. This structured and transparent approach will provide a higher degree of certainty to industry on the timely delivery of regional infrastructure.

Beyond these recommendations, the NSW Government must ensure there is appropriate Secretary-level representation on the Government Coordination Group. Appropriate representation is critical to the effective operation of the governance model and will ensure discussion about growth challenges, agency capital programs and infrastructure priority recommendations to Cabinet can be progressed in a timely manner with the full confidence of Ministers, industry and community.

The Property Council also supports the phased approach to implementation as outlined in the Bill and welcomes the commitment by government to develop a digital tool for improved implementation of the calculation and collection of the H&PC.

The provision for works-in-kind agreements where developers can dedicate land or works for regional infrastructure is also welcome. Where a developer undertakes works in kind on behalf of a council and obtains a credit against future development, those credits should be tradeable with other developers carrying out projects within the same precinct. This will ensure the vital nexus between location-based charging and investment is maintained in line with the Productivity Commission's recommendation.

Ultimately, councils should be encouraging developers to provide works in kind where possible and where the value of those works exceed the contributions liability of a development, the credits owing to a developer should either be transferable to another developer in the same precinct or towards the same developer's contribution liability within another precinct or contributions area.

Furthermore, the Property Council recommends the NSW Parliament should move an amendment to address current concerns around the payment of both local and regional contribution charges at the construction certificate stage. Specifically, the NSW Parliament should follow the Productivity Commission's original recommendation and remove barriers to project feasibility in the Bill by deferring payment of all contributions to the occupation certificate stage.

As previously stated, while the Property Council provides conditional support for this Bill there remain significant concerns with the status of other key local and state contribution schemes which make up the broader system of infrastructure charges and levies. In particular, the Property Council remains highly concerned with the approach adopted by Sydney Water in the re-introduction of Developer Service Plan (DSP) charges.

Sydney Water and Hunter Water DSP Charges provide no infrastructure delivery certainty

The Property Council was recently informed by both Sydney Water and Hunter Water of their intention to reintroduce DSP charges to fund water and wastewater infrastructure in key growth locations of Greater Sydney, Illawarra and the Hunter regions.

The reintroduction of charges of this nature will essentially operate as a new tax on the delivery of homes, which can only lead to increased house prices and rentals. Along with escalating construction costs, the DSP will directly impact housing supply and further entrench the housing affordability and rental crisis.

The re-introduction of DSP charges was originally part of the Infrastructure Contributions Reform (ICR) Package but have since been progressed independently of the stalled ICR reforms. The re-introduction of DSP as a new charge, independent of the broader reform package, is not supported by the Property Council or the industry at large.

While the Productivity Commission recommended the NSW Government phase in metropolitan water contributions for more efficient delivery of water infrastructure, neither Sydney Water nor Hunter Water have progressed their DSP models in line with the Productivity Commission's principles. Indeed, there is nothing about the proposals that improves certainty around the delivery of infrastructure.

Unlike the commitments made under the Housing and Productivity Contributions Bill, Sydney Water and Hunter Water have provided no clarity on how it will improve infrastructure identification and prioritisation, consultation or indeed accountability through a revised governance model. This lack of detail is deeply concerning as its unclear whether any demonstrable benefit will flow from the new charges imposed by Sydney Water and Hunter Water.

Sydney Water and Hunter Water have conveyed to the development industry that these changes are based upon a need to provide a locational price signal that represents the genuine costs to service growth areas. The flaw with this approach is that the price signal favours locations where urban growth and development is difficult to achieve due to local council resistance, inconsistent planning policies, and other Government policies such as the Greater Cities Commission's Retain and Manage policy for industrial land.

The DSP should not be the main determinant of what housing is provided where. Without a revised pricing methodology and effective and transparent governance model in place, the proposal to transfer costs from the existing pricing arrangements effectively makes this a tax on new housing supply. A modified version of this proposal could have merit in the future when and if these issues are resolved, but only if it is considered as part of a comprehensive reform of the state's broken infrastructure contributions system.

Industry still requires clarity over the future of local contributions reform

So far, the NSW Government has been silent on what developers, and by extension homeowners, will pay in local contribution charges to councils. The proposed reforms to Section 7.11 and 7.12 local contributions are in limbo with no clear Government position detailed since the March election. Indeed, the development industry has no clarity over the full cost of development across State, local and other infrastructure related costs.

Further there has been limited movement on the direct land contribution model to ensure those which benefit from the rezoning process contribute to a future place outcome that shares the burden of the total cost of development. The potential land acquisition cost savings for public infrastructure are critical and will further drive down costs and lessen the time taken to deliver coordinated growth outcomes.

It is critical that the NSW Government provide more transparency to stakeholders about the costs that will be incurred as a consequence of these and future contribution changes. This lack of certainty is deeply concerning and highlights the broader problem with a piecemeal approach to contributions reform.

Industry would firmly oppose any attempt to walk away from the Productivity Commission's considered and holistic reform program. We encourage this Committee Inquiry to recommend full implementation of this reform program to achieve a more efficient and effective infrastructure contributions system in NSW which supports rather than deters investment in new housing.

Thank you for consideration of this submission. If you would like to discuss this submission in more detail, please contact me directly at mplayer@propertycouncil.com.au or via **0424 698 189**.

Yours sincerely,

Michael Player
Acting NSW Deputy Executive Director
Property Council of Australia