



11th September 2023

Attention: Jonathon Schipp
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Jonathon

RE: HOUSING AND PRODUCTIVITY CONTRIBUTIONS DRAFT MINISTERIAL ORDER

Thank you for the opportunity to provide feedback for the review of the Housing and Productivity Contributions (H&PC) Ministerial Order on behalf of the Surveying profession in NSW.

The Association of Consulting Surveyors NSW (ACS) is the association representing the private industry of more than 220 surveying firms around the state of NSW. These firms employ Registered Surveyors, technical surveyors, town planners, civil engineers, environmental scientists, landscape architects and other key professionals involved in the land development process.

The Institution of Surveyors (ISNSW) is the professional body representing 1000 individual surveyors working across the state.

There are Registered Surveyors in every major centre and town across the state who maintain and improve the accuracy of the cadastre for land management that is so critical to the State's success. Registered Surveyors are involved in a large range of projects from housing subdivisions to major infrastructure projects and the collection of spatial information and mapping used to improve agricultural activities. No building or infrastructure project can commence without being surveyed, with the construction industry being worth upwards of \$190 billion to the Australian economy.

Registered Surveyors are the land experts; not only qualified in surveying, but also in allied areas such as engineering and town planning. These experts have a breadth of experience in many facets of land development - providing information and advice pertinent to property and its environment to assist in determining the best sustainable land use and development. They plan, estimate, design, measure, and manage construction works, applying prudent financial control and advice. Registered surveyors are therefore the experts on the ground when it comes to the impacts of legislation and processes pertaining to land development.

Originally, we did not provide input into the proposed changes to HP&C based on the draft consultation documents as they did not appear to have a significant impact on our profession.

It has been since the release of the NSW Department of Planning and Environment's Implementation Guideline in late August, that our members have come to us seeking further clarification about the contribution. Many of our members have expressed concern at the rushed nature of the implementation of this legislation and that their current position to provide the best advice to their clients in readiness for its introduction on 1 October 2023 is in jeopardy.

We recommend a longer transition period; ideally the date of introduction could be pushed back to allow for more industry consultation and to ensure no unanticipated loopholes are created. It should also be noted that the training spaces offered by the Department for September, in preparedness for this change, are already full. Taking the training in October doesn't allow for the change of policies and procedures in time for 1 October or the ability to advise their clients on the upcoming change.

Some of the questions that have been raised in the last week alone include:

- Are developments with a prior development application exempt from the 1 October starting date?
DPE Response: Yes.
- Are the strata subdivision of old buildings exempt (ie: does it only applying to the creation of new and additional habitable apartments)?
DPE Response: As drafted, it is expected that the contribution will be applied if there is an application to subdivide an old building (eg existing serviced apartments converted to a residential flat building). We will be adjusting the order so that new buildings intended to be subdivided will need to pay a contribution before construction.
- Are lots created for the future dedication of a public road, or are created for future public reserve excluded from the levy count (ie: the levy is only applied to the creation of additional habitable lots)?
DPE Response: Lots for the purpose of dedication as a road are exempt. The contribution only applies to lots that are for residential accommodation.
- Will buildings that are complete, nearly complete or approved and ready to starbe subject to the HPC? If so, does the HPC only apply as follows:
DPE Response: The contribution will not apply as these developments have approvals prior to commencement.
 - a. In the case of subdivisions creating vacant lots, the HPC is payable for every additional lot created (ie: If you subdivide one lot into ten lots, the fee is payable nine times)
DPE Response: Yes – if subdividing 1 lot into 10 the contribution will be for the 9 new lots. It is only one contribution amount on the approval – so one payment but 10 x \$12,000 (new torrens lots) minus 1 x \$12,000 (existing torrens lot) = \$108,000 contribution. This is only on applications lodged/made after 1 October – not currently under assessment or already approved.

DPE Response: In the case of developments involving erection dwellings, the HPC is payable for every dwelling in excess of one. No further HPC is payable if that development is subsequently subdivided by either Torrens, Strata, or Stratum.

If the contribution was paid on the subdivision of land for housing lots – then there is no contribution when making an application for the construction of a house on that lot (there is no further subdivision involved – so the contribution is not triggered).

If a person was intending to construct a dual occupancy on the housing lot and subdivide it – then yes, it would pay for the one additional lot that is being created.

If a person constructs a house and a secondary dwelling on the housing lot (and the secondary dwelling is not being separately titled/subdivided) then there is no additional contribution as there are no additional lots being created. If a person later decides to subdivide to create the secondary dwelling on a separate title, then it would be make a contribution for the additional lot.

- Do applications for modifications to a building requiring a DA trigger the contribution?

DPE Response: For applications that were lodged before 1 October – the contribution does not apply. It also does not apply to any subsequent modification to.

For applications lodged after 1 October – any modification to the consent that changes the number of lots may have a corresponding change in the contribution amount that is due.

For applications to modify a dwelling (such as a second storey or extension) that does not involve creating additional lots – the contribution does not apply.

- Does HPC apply when a strata scheme needs to be recreated for affordable housing if it does not increase growth?

DPE Response: Affordable housing in accordance with the Housing State Environmental Planning Policy (SEPP) is exempt.

- If there is an existing approval of a residential high rise building where the number of lots is modified, is there then contribution on the increased amount of lots? CDC application needs to take account of lots approved for development prior to 1 October 2023.

DPE Response: As before – if it is a modification of a consent that was originally made before 1 October – then the contribution did not apply to the original consent and will not apply to any subsequent modification.

If the original application was made after 1 October – then the contribution will apply to the original consent and will continue to apply to any subsequent modification.

- If there is an existing approval for residential building will there be a subsequent approval for stratum subdivision and strata subdivisions lodged after 30 September?

DPE Response: As above, subsequent strata subdivision of an existing approved residential building will not attract a charge

- Concerning the concession for existing high rise development and shop top housing, does this include "residential flat building" approved in medium density zoning eg approved under State Significant Development?
DPE Response: yes
- When is the contribution due for payment? There is confusion over whether the timing of when the contribution is from when the application is lodged with the portal or from when a council accepts the application. Currently everything goes through the planning portal and so this would be a better date than the unknown timing of the council drawing it down, especially with the transitional discounts only available for a limited time.

DPE Response: For subdivision of land – it will be prior to release of the Subdivision Certificate.

For all other residential – it will be prior to release of the Construction Certificate (for development applications) and prior to the Notification to Commence Works (for complying development certificates).

Substantial concern has been raised in relation to the following clauses in the Order:

1. Clause 12, subclause 3(e) – It is our recommendation that this clause be amended to read “it is only created for the purpose of rectifying and encroachment , or a realignment of boundaries, on an existing lot”. The Order notes adjustments to rectify an encroachment. However, an adjustment may be required to resolve inadequate building offset that doesn’t encroach. This change would be consistent with Subdivision 38, Clause 2.75 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

There is no mention of common property in a strata but common property is not a lot. It is only a title. It is recommended there be clarification that the number of lots created in a strata scheme will exclude the common property title.

12(3) utility lots restricted by S63 of the SSDA2015 should also be excluded from the contributions by calling them "utility lots restricted under s63 of the Strata Schemes Development Act 2015".

2. Clause 13 - Our members would like further clarification regarding common property and development lots and have suggested, similar to clause 12 of Order, clause 13 should be amended to include a concept of a “excluded lot” being a lot which is:
 - a. common property within the meaning of the Strata Scheme Development Act 2015;
 - b. a development lot within the meaning of the Strata Scheme Development Act 2015; and
 - c. a utility lot within the meaning of the Strata Scheme Management Act 2015.Clause 13(1) should then be amended to read “less the number of any existing lots when the development application is made and any excluded lots”.

3. Clause 16, subclause 3 - There has been further discussion about common areas in mixed use buildings as in a mixed use strata scheme, all of common property is area which can be used by either the commercial or residential schemes. We are concerned that the term “common area” is vague and could encompass parts of common property which whilst they can technically be used by the commercial, are in practice residential areas. An example of this is in a shop top housing development where a lift is common property but which only services the residential apartments and which is in practice not used by the ground floor retail tenant.

Stratum subdivision is to utilise to separate the various components of a building into residential, commercial, retail, public carparking, public buildings (libraries, childcare). The detailed titling component of development is often left until building construction commences. It is then that the surveyor consults with the developer and architect about the shared facilities that are going to be provided and make provision for the lot shapes, easements and subdivision requirements for the development.

To add additional charges onto stratum lots may disincentivise developers to pursue good titling outcomes for the development. Our members are concerned that this may see some developers simply doing a mixed use strata for the entire building. Mixed use development can lead to long term issues between the competing interests businesses and residents.

Other comments received from members:

- It should be noted that there are often grey areas when it comes to land development that don't fit nicely into the box of legislative requirements. It is our recommendation that there be a workable mechanism for resolution of situations where there is a grey area to the application of the Ministerial Order.
- There is concern that the contribution is linked to new land titles which could create an imbalance between those who will build to sell and those who will build to keep and/or rent. It is the opinion of some of our members that the contribution should be linked to the construction of the property rather than the land title.
- There is no nexus between the strata subdivision and the provision of infrastructure. No works are carried out and there is no intensification of land use created by strata subdivision. Any strata subdivision is merely a titling exercise. Strata should be removed from the ministerial order.
- Our members tell us that their clients were more comfortable paying the Special Infrastructure Contribution as they could see the result of their funds as they were spent in their area. They feel this may no longer be the case as they will now be spread further across the state. They suggest regular updates, or a graph, on the portal that they can refer to so they can see the outcomes of their contribution.

- Our surveyors are concerned that this levy will stifle development. They are already receiving feedback from their clients that this cost will see them priced out of the market. They also have a fear of being subject to a future court case if they inadvertently make a mistake and are considering slowing down their developments until more is known.
- With rising housing prices and the need for more housing stock, it is also wondered a levy is being introduced as it appears to go against the recent recommendations of the NSW Productivity Commission.

Given the many concerns raised since the implementation guide was released, we would be more than pleased to meet with you and your team for further consultation regarding improvements to the Housing and Productivity Contribution to avoid unexpected loopholes and create an understandable and fair system into the future.

Please contact Michelle Blicavs directly on 0425 244 055 if you would like to discuss this further.

Yours sincerely,



Michelle Blicavs
Chief Executive Officer



Rachel Greenwood
Chief Executive Officer