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Productivity Commission
4 National Circuit
Barton ACT 2600, Australia

Dear Sir / Madam

Submission on the Interim Report on Housing Supply Regulation

The Commission should recommend the density outcome first. Planning controls should then be calibrated as place-based, least-cost means to that outcome.

The Productivity Commission rightly concludes that land-use reform permitting greater urban density is likely to have the greatest effect on housing supply. Yet reform directions recommend particular means without recommending the desired density outcome.

Prometheus Planning supports removing inefficient constraints. Our concern is the policy architecture. A planning control is not an outcome.

Permission for three storeys does not state how many homes a neighbourhood should optimally accommodate. Removing FSR does not establish the desired efficient intensity of land use.

The scale of regulatory fragmentation demonstrates the need for reform. Prometheus Planning's review of NSW LEPs identifies 378 different mapped building-height values and 242 different FSR values. The data include controls expressed as precisely as 9.19999981 metres and 2.0999999:1.

Whether that precision reflects legacy mapping conversions or deliberate drafting, it conveys false accuracy and makes the system harder to explain and administer.

NSW standardised its planning framework to 32 land-use zones and has recently applied clear height and FSR settings through the low- and mid-rise housing and transport-oriented development programs. The next reform should standardise the regulatory toolkit without confusing that toolkit with the outcome.

The final report should set the end before the means.

State and territory governments should establish context-specific desired dwelling-density outcomes, linked spatially to housing need, accessibility and infrastructure. Local decision-makers and markets can then have disciplined flexibility to calibrate the least-cost combination of controls and housing forms capable of delivering the desired density outcomes.

The Hunter Regional Plan 2041 illustrates this approach. It specifies desired dwelling densities for different urban contexts and higher expectations near centres and public transport, while allowing diverse housing types and locally selected controls to provide the means.

Outcome-based flexibility must also be integrity-based. It should not mean ad hoc bargaining over individual sites. The NSW Independent Commission Against Corruption (ICAC) advice is directly relevant to the Commission's proposals. This includes reduces discretion, rent-seeking opportunities and unequal treatment.

Key Recommendations

- **Set the end before the means.** Recommend context-specific desired dwelling-density outcomes, using a consistent measure and linked to housing need, accessibility, infrastructure and place objectives.
- **Treat reforms as a toolkit.** Assess height, minimum lot sizes, mixed-use permissions and built-form controls as alternative or complementary instruments, not outcomes in themselves.
- **Standardise and simplify the regulatory toolkit.** Establish a limited, coherent set of height and FSR benchmarks aligned to zone purposes and urban contexts. Amend residential zone objectives to refer to desired future - not current - character and amenity.
- **Embed ICAC's anti-corruption safeguards.** Decisions about planning controls should follow clear, robust and objective statutory criteria. Flexibility should be rules-based and transparent, not dependent on site-specific negotiation or non-statutory controls.
- **Use place-based, least-cost regulation.** Retain or recalibrate controls where they efficiently manage a demonstrated externality or public good. Remove them where their costs exceed their benefits or they frustrate the density outcome.

Prometheus Planning accepts that many planning controls are overly granular, cumulative or poorly justified.

This submission advances a fundamental proposition that the Commission identifies increased density as the high-leverage outcome, but frames its recommendations around selected regulatory instruments.

The final report should correct that hierarchy.

Good regulatory design should state the outcome, establish measures and accountability, and allow informed actors to choose efficient means.

That is particularly important in planning because site conditions, market demand, feasibility, infrastructure and externalities vary substantially.

A clear spatial outcome uses local and market knowledge without surrendering strategic direction or public safeguards.

The interim report confuses means and ends

The interim report states that relaxing land-use controls is likely to have the greatest effect among its reform directions and prioritises higher-density living through upzoning. This is economically coherent.

Where demand is strong and well-located land is scarce, low-intensity use has a high opportunity cost. Additional households can share access to employment, services and infrastructure, support public transport and agglomeration, and widen the set of housing choices.

The Commission also recognises that controls interact and the more restrictive control determines what can be built. That insight should govern the recommendations.

Removing one planning control may not change feasible output if height, setbacks, site coverage, parking, access, infrastructure, ownership fragmentation or feasibility becomes binding instead.

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Commission reform direction	Regulatory means	Outcome-first reframing
Allow up to three storeys	Height of building controls	Set desired density by context. Use three storeys as a default floor where it can deliver the desired outcome.
Allow mid- or high-rise apartments	Height of building and land use permissibility controls	Define high demand and accessibility, then set the density range and allow feasible forms to compete.
Reduce minimum lot sizes	Minimum lot size control	Target feasible dwelling density. Reform minimum lot size where it is a binding constraint.
Allow housing in commercial zones	Land use permissibility control	Set complete-neighbourhood outcomes for homes, jobs and services, then calibrate mixed-use permissions.
Reduce parking, heritage and character controls	Overlay and design standards	Identify the externality or public good and use the least-cost, place-specific instrument.
Remove FSR and typology restrictions	FSR and land use permissibility controls	Audit the combined control package and require it to be capable of delivering the density outcome.

This distinction changes accountability. A jurisdiction can report that it has permitted three storeys or removed parking minimums even if feasible capacity and completions do not increase. A density outcome, supported by realistic capacity testing and delivery data, makes symbolic reform harder.

It also preserves efficient instrument choice. Different combinations of height, FSR, setbacks, site coverage, lot size, parking and housing type can achieve similar dwelling densities with different construction costs and effects on the public realm.

Performance-based frameworks focus on the effects to be achieved rather than prescribing every input (Forman, Norris & Plass 2023, p. 77). In housing policy, performance must include the positive output of enough well-located homes, not merely limits on adverse effects.

Boston shows the cost of controls becoming detached from ends. A review found thousands of pages and hundreds of zoning districts without a comprehensive vision. The proposed remedy began with city-wide planning goals and asked planning controls to calibrate to the goals (Bronin 2023, pp. 1, 9, 19–30).

Excessive precision is not place-based planning

NSW LEPs contain 378 different building-height values and 242 different FSR values (Prometheus Planning 2026).

Controls expressed as 9.19999981 metres or 2.09999999:1 illustrate a wider problem: a system can become highly specific without becoming more purposeful.

Such granularity fragments the market's development rules, raises search and design costs, complicates administration and creates more boundaries at which small differences in mapped controls can be capitalised into land value.

Standardisation is not the same as uniformity. The Standard Instrument LEP process reduced NSW land-use zoning to 32 zones, creating a common language, while retaining local spatial choices.

More recently, the low- and mid-rise housing and transport-oriented development programs have shown that NSW can establish clear, repeatable height and FSR settings across varied places.

A limited suite of benchmark controls could similarly reduce needless variation, provided those controls are calibrated to context-specific desired density outcomes and allow justified exceptions.

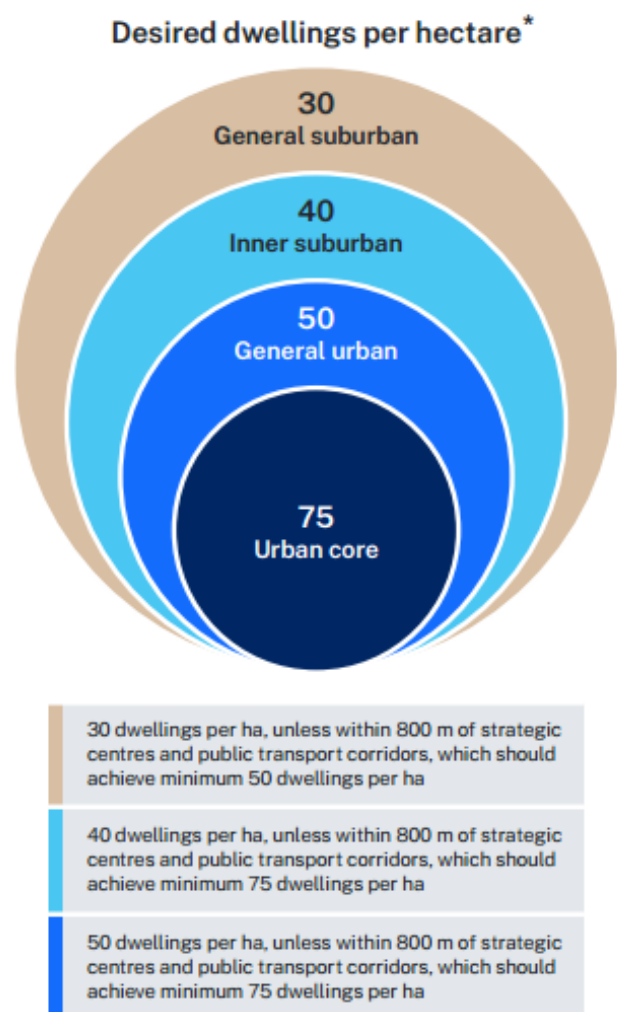
If a standard 9.2-metre height or 2.1:1 FSR is not capable of delivering the outcome on a particular site, the response should ordinarily be a different zone, a better place strategy, not a statutory control fine-tuned to multiple decimal places.

The end remains the desired density and place outcome. Standardised controls are simply a clearer and lower-cost means.

The Hunter Regional Plan 2041 as evidence for an outcome-led framework

The Hunter Regional Plan 2041 provides an Australian example of ends-first planning. Objective 5 treats housing as both a quantitative and qualitative outcome, including supply, diversity, affordability, resilience, access and efficient use of infrastructure.

Strategy 5.2 directs local strategic planning to consider controls that reflect desired dwelling densities, with higher expectations near strategic centres and public transport (NSW Department of Planning and Environment 2022, pp. 53–55).



*For regional Hunter 15 dwellings per ha, unless within 800 m of strategic centres and public transport corridors, which should achieve minimum 30 dwellings per ha.

These contextual targets give councils a basis for statutory controls, infrastructure providers quantities for network planning, communities a clearer indication of anticipated change and the market a signal about opportunity. They do not prescribe the same building on every lot.

The plan envisages attached housing, dual occupancies, multi-dwelling housing and apartments, organised to support walking, cycling, public transport and 15-minute neighbourhoods.

That is the key contrast with the interim report. The Hunter Plan states the desired density and lets planning controls and housing forms provide the route. The Commission recommends particular routes but omits the destination.

The Hunter numbers need not be copied nationally. The transferable principle is contextual outcomes combined with local implementation flexibility.

Capacity must exceed the target and reflect delivery

UCLA's "zoning buffer" analysis adds a land-market rationale. Small or concentrated upzones can create scarce development rights that landowners capitalise into land prices.

A broad set of substitutable sites can increase competition among landowners and improve the prospect that reform benefits reach housing supply, rather than being absorbed as scarcity rents.

The analysis is illustrative and not calibrated Australian estimate, but it supports a transparent capacity buffer distributed across feasible locations (Phillips 2022, pp. 3–10, 16–20).

Missing-middle evidence reinforces the distinction between permission and housing supply.

Turner Center analysis found that after California's SB 9, only about 1.5% of single-family properties gained new, financially feasible capacity under the modelled conditions.

San Jose testing found many projects feasible at six or eight units but not four, while practitioner discussions commonly identified eight to twelve units as viable (Garcia et al. 2022, pp. 1–2, 5–17).

The lesson is not to import those unit numbers. It is to test the combined envelope, costs and likely market response before claiming that a nominal permission will deliver supply.

Regulatory focus should be on robust analysis for outcomes, not prescribing the method to achieving the outcome.

NSW ICAC's recommendations are anti-corruption measures

The need for flexibility does not justify open-ended discretion. Planning decisions allocate valuable development rights.

Unclear rules, site-specific bargaining and unexplained departures can create information asymmetry, unequal treatment and opportunities for regulatory capture and rent-seeking.

An outcome-led framework therefore requires stronger ex ante rules, disclosure and auditability.

The Operation Dasha report arose from an ICAC investigation into conduct at the former Canterbury City Council.

Recommendation 16 was made as a corruption-prevention recommendation and should be considered in the context of the Commission's review.

The NSW ICAC's report contains two relevant:

- Consider the circumstances in which both maximum building-height and maximum FSR development standards should be mandatory in LEPs.
- Establish clear, robust and objective criteria for determining when it is impractical to pair maximum height and maximum FSR standards in LEPs.

ICAC accepted that some flexibility in pairing the controls is appropriate, but considered that it should be governed by clearer guidance. It also rejected general reliance on development control plans for this task because those provisions are not statutory requirements and, in the investigated matter, the council's DCP was considered inconsistent with its LEP.

ICAC regarded the LEP as the appropriate site-specific mechanism for built-form standards (ICAC 2021, recommendation 16).

These are not merely technical preferences. As anti-corruption measures they seek to make the allocation of development potential predictable and reviewable. Mandatory pairing in defined circumstances can prevent a nominal height allowance from implying development potential that the FSR does not support, or vice versa.

Objective criteria for exceptions reduces the scope to tailor controls opportunistically for particular sites. Locating substantive standards in statutory instruments improves visibility, legal effect and accountability.

This directly qualifies the interim report's proposed removal of maximum FSRs.

A blanket removal could discard an integrity safeguard without first identifying the outcome, the interaction with height or the corruption risk created by shifting decisions into less transparent design negotiation.

Conversely, automatically imposing both controls everywhere could add unnecessary rigidity.

NSW ICAC's approach is consistent with the central means-and-ends argument to define the desired density outcome and then use clear, robust and objective criteria to select and align the planning controls.

The Commission's final report should therefore recommend the following integrity principles:

- Strategic housing and density outcomes, and the principal rights needed to deliver them, should be expressed in statutory plans.
- The relationship between height, FSR and other binding controls should be tested and published.
- Exceptions should use objective eligibility and assessment criteria, recorded reasons and public reporting.
- Site-specific uplift should be assessed consistently against the adopted outcome, infrastructure and public benefit, with conflicts and probity risks managed.
- Monitoring should identify recurrent variations, concentrated uplift and departures that may signal defective rules or integrity risks.

Rules-based flexibility is the synthesis. It enables place-based choice of means while constraining arbitrary discretion. That supports both productive efficiency and public trust.

Reframe the Commission's reform directions as means

Prometheus Planning supports the reforms where evidence shows that the nominated control is a binding and inefficient constraint. However, the final report should attach an outcome focussed test to each reform direction.

Standardise before proliferating or abolishing.

NSW should consolidate the 378 height and 242 FSR values into a limited suite of intelligible benchmarks aligned with zone objectives and desired density contexts.

Variations should require a clear planning rationale, demonstrate how they deliver the desired density and be recorded in a form that is publically consistent.

This would reduce transaction and administration costs, while preserving genuine place-based variation.

The objectives of the residential zones should also be amended to require compatibility with the desired future character and amenity of the surrounding neighbourhood, removing references that privilege current character and amenity.

"Current character" can convert an inherited low-density form into an implicit end and frustrate an adopted growth outcome.

Desired future character should instead be defined through strategic plans, density outcomes and objective built-form expectations.

FSR and built form.

Setbacks, site coverage, height and FSR should be audited as a combined envelope.

A maximum FSR may be redundant in one context, binding in another and useful for managing bulk differently from height in a third. The correct recommendation is to remove, retain or recalibrate each control against the density outcome, feasibility and externalities, not categorically remove one instrument nation-wide.

This reframing is more pro-supply because it tests whether reform produces realistic capacity. It is also more economically efficient because it leaves room for lower-cost local solutions and prevents one prescribed means from becoming a new rigidity.

Three-storey and apartment permissions.

A broad three-storey permission can expand opportunity and enable incremental infill, but it may be too little in highly accessible markets and commercially weak elsewhere. Mid- and high-rise permissions can add substantial capacity, but the report should define high demand through published indicators and link permissions to a density range.

Storey regulations are means. Desired dwelling density is the relevant outcome.

Minimum lot sizes and housing types.

Smaller lots and broader range of housing-type permissibilities can support subdivision, entry by smaller developers and missing-middle housing. Their effectiveness depends on servicing, access, setbacks, subdivision rules and feasibility.

Jurisdictions should measure the additional desired dwelling density, not the number of controls deleted.

Conclusion

The Productivity Commission's central finding should be strengthened, not diluted.

Increased density is likely to be the most powerful land-use contribution to housing supply. The final report should therefore recommend the desired density outcome it expects planning reform to deliver.

Storeys, lot sizes, permissibility, parking, FSR and built-form standards are means. Their value depends on whether, together, they provide the desired density in the right contexts.

The Hunter Plan demonstrates how desired density can guide diverse, place-based solutions.

NSW's 378 height controls and 242 FSR controls show that place-based planning has too often become control-by-control customisation.

The better regulatory response is a simpler, standardised toolkit directed to clear density outcomes, supported by future-focused zone objectives and a place delivery mechanism capable of resolving infrastructure and agency constraints.

Place-based flexibility must also be rules-based. NSW ICAC's Operation Dasha recommendation demonstrates that clear, robust and objective statutory criteria for height and FSR are important anti-corruption safeguards.

Outcome-led planning should reduce unnecessary prescription without replacing it with opaque discretion.

The Commission has identified the lever. Its final report should specify the result, protect the integrity of the mechanism and hold governments accountable for delivery.

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