

Protect Fitzroy North

Submission to Productivity Commission Inquiry into Housing Supply Regulation Interim Report

1. Protect Fitzroy North – Submission Overview

About Protect Fitzroy North

Protect Fitzroy North (PFN) is a resident-based community organisation formed in 2016 within the northern suburb of City of Yarra, in Melbourne's inner north. Protect Fitzroy North had its genesis opposing a massive 16 storey 476 apartment development that would have loomed over tiny worker's cottages behind and to the north. When the local State member, Planning Minister Richard Wynne, stepped in and supported the huge community campaign by imposing a 10 storey height limit on the site, there was elation in the suburb.

Since this victory, PFN has engaged with the community, local and state government and regulatory bodies to develop strategic plans that are compatible with and enhance the character and amenity of Fitzroy North and nearby suburbs while protecting the heritage precincts from inappropriate development. Protect Fitzroy North has supported multi-storey housing growth within the municipality and is not anti-development. However, it will oppose development that seeks to erode local heritage, streetscapes, and neighbourhood amenity, and where outcomes are imposed on the community without its input.

Summary

PFN is concerned that the scope of the Productivity Commission inquiry is too narrow and the principles of best practice do not in themselves determine the level of regulation that is either appropriate or may be required to facilitate housing supply that supports vibrant and sustainable communities. The Terms of Reference are also biased towards a pre-determined outcome of reduced regulation. And affordability is used as a driver for the Inquiry, while there is no tangible commitment that removing regulations will increase the supply of more affordable housing. Other major factors impacting housing supply and affordability - economic root causes such as economic policy, interest rates and market drivers (building and labour costs), are down-played. There seems to be limited understanding or appreciation of urban planning – strategic or statutory. Further, consultation on this interim report so far seems to have been minimal. Key bodies, including Councils and heritage bodies, do not appear to have been consulted and public awareness of the Inquiry is negligible.

For PFN, for any development proposal, context is always important and planning decisions are inevitably political, in that there are positive and negative impacts. This is why planning, the process by which housing supply is affected, must remain a public process that is open and transparent and where there is full public accountability for all decisions. Only this can ensure trust in the system.

Our experience locally of the use of Fast Track and Ministerial development facilitation processes (See Attachment A) means we hold deep concerns about the interim reform directions particularly 2.5, 2.6, 3.2 and 3.3.

This leads us to conclude the following:

- A. The need for retaining public and local government input into decisions shaping the ongoing development of our local communities rather than top-down decisions from State or Federal Governments or unilateral decisions by the Planning Minister:
- approvals processes particularly concerning maintaining public notification for all development proposals; community (and local government) retaining objection and appeal rights.
- B. Retention of regulations is important to placemaking - to ensure and protect the individual character of each area. Local communities and planning authorities need to be in control of placemaking not property developers who have no ongoing commitment to the amenity of an area or it's community. e.g.
- local planning schemes
 - regulations governing building heights, setbacks, character and open space,
 - the protection of local heritage and character (at a broad scale not just at the individual building level)

Contrary to the interim directions of the Productivity Commission PFN is of the view that:

- i) Heritage Overlays do not stop development.
- ii) There are multiple economic benefits to Melbourne's renowned heritage areas
- iii) Changes that strip away local voices would be a backward step.

i) *Heritage Overlays do not stop development – this is a spurious argument.*

- 70% of properties in Yarra are covered by Heritage Overlays and yet from 2001-21 there were more than 17,200 'other' dwelling (not houses) approvals and the population increased by 33,400 persons.

Proposed Removal of heritage overlays

- The recommendations related to heritage places are ill-founded, unrealistic and deeply worrying to the community (if they knew about them!). Important factors are ignored or misrepresented. The idea that somehow proposed heritage controls can be assessed on a cost-benefit basis is nonsense. Removal of heritage overlays is not necessary and is short-sighted. Once demolished our heritage places are gone forever, along with their history.

ii) *Economic benefits of Melbourne's renowned heritage areas include:*

- They are a major attraction for tourism visitation and older neighbourhoods make huge contributions to Melbourne's reputation for liveability.
- Heritage streetscapes along retail strips (such as Smith and Brunswick Streets) create a distinct sense of place that attracts visitors, shoppers and tourists.
- They support and anchor the innovation sector which thrives on walkable character-rich environments. The core engine of an innovation sector is human beings. Highly skilled knowledge workers, researchers, and tech founders are drawn to distinct places with high liveability and vibrant streetscapes.
- They provide sense of place and identity that major global entities use to recruit highly skilled workers and global investment.
- The old fabric of fine grain heritage areas offers suitable footprints for marginal and start-up businesses, independent retailers, quirky creative enterprises and small businesses.

- Heritage and sense of place play a big part in social cohesion, which has an economic value.¹

iii) Changes to the way Planning Decisions are made would be a backward step

The Victorian experience of recent planning ‘reforms’ is that they are: fuelling land speculation, leading to empty sites and on-selling; not delivering affordable housing; undemocratic – removal of community and council input; decision-making behind closed doors raises questions of probity; and poor decision outcomes resulting from lack of knowledgeable local input.

The Productivity Commission should heavily qualify recommendations to support fast tracking and the use of Ministerial power to force through controversial developments. This kind of deregulation transfers power to developers and undermines local voices and the integrity of the system. Communities and local planning authorities have a right to be involved in place-making and shaping the future of their communities, rather than leaving it to property developers with no commitment to place.

- Managing private development for the common good is important to placemaking, to manage the distinct character and amenity of each place, to ensure orderly, safe, sustainable communities. This includes: local planning schemes and regulations governing building heights, setbacks, character and open space and Heritage Overlays.
- Planning is, and must remain, a public process that is open and transparent, where there is full accountability for decisions that are made. Trust equals social license.
- Changes to Victoria’s Planning and Environment Act; to zoning; replacement of mandatory height controls with discretionary controls; use of the Development Facilitation Program; and arbitrary approvals, have not, and are unlikely to produce anything like the level of affordable housing required. Market’s respond to demand, effective demand. Those on fixed or low income have a human right to housing but not at the price point the market would bring forward supply
- Recent planning changes in Victoria with reduced opportunities for local community input represent a backward step and are not a pathway for addressing housing supply that maintains social license. Public notification for development proposals; and community and local government objection and appeal rights are fundamental to better decisions and confidence in the housing and planning system.

2. Principles of best practice

The principles identified as ‘best practice’ should be more outcome focused as on their own as currently described do not clarify the level of regulation that is either appropriate or may be required. We do not share the Productivity Commission’s somewhat optimistic view of minimal regulation while leaving the matter of housing supply to the housing market and development industry to determine optimum levels of output. The case could also be made that in certain places or instances more rather than less regulation could be beneficial to the Australian community:

¹ <https://oicd.net/post?slug=the-social-cohesion-dividend-why-unity-isn-t-just-a-nicety-it-s-an-economic-necessity>

Principle 1. Adopt a build mindset –

- A) Without some guidance this principle is either meaningless or dangerous. More is not always better. Quantity without considering quality – of housing, of the environment, of the current and future community is irresponsible or dangerous. It risks creating ghettos of the future.

Even though government may have a “build mindset” this mindset is not always shared by the market. Some examples are outlined below:

- i) planning permits for residential development are issued but sit on the shelf and are not activated; there is no penalty for this and developers can readily obtain extensions on the permit
 - ii) where developers have no intention to invest and deliver a project but flip properties once they have obtained a permit, cashing in on the additional value that has been created for the site. A value that has been created by a decision through a government approval not by developer input or innovation.
 - iii) in the greenfield areas where developers have minimal regulatory impediments to build, they control supply by drip feeding release of lots to the market to ensure that prices do not drop; and there is a lack of housing diversity that is built, at lower densities that could be sustained.
- B) ***Higher density zoning near jobs and transport corridors*** (from Table 1.1 p.27) – On the face of it this is a sensible response. However, it is not an ‘either’ ‘or’. From a ‘whole of community’ planning perspective it could be said that this sort of mindset only serves to entrench regional job inequality and reinforce low density housing in outer areas. This means that all the people living in and moving in the future into these less job rich and transport accessible areas have to commute long distances/time to access jobs. A better approach would be to understand what would be required to increase jobs and housing density in all areas. Why should locational inequalities not be addressed as part of an approach to increase housing supply.

Principle 2. Only regulate when necessary –

- i) There has been a lot of public discussion about social housing and housing affordability. However, the report is silent about whether there is a need for stronger regulation to ensure the market delivers sufficient housing for people on fixed or low incomes. PFN strongly supports delivery of more public, social and affordable housing as a percentage of all new development. We find though, that there is plenty of evidence of the market meeting demand for luxury apartments in inner Melbourne – for empty nesters down-sizing, for the high income earners and overseas investors. But developers appear to have little appetite to deliver to the bottom end of the market, where “effective demand” is weak and government resolve is low. Key workers such as teachers, nurses, emergency service workers cannot afford to buy in inner areas yet we need their services and the services of cleaners, waiters, clerks, shop assistants in inner Melbourne as much as they are needed in outer areas.
- ii) The irony is that there appears no correlation between regulation and housing supply. Much of the focus of the Productivity Commission falls unfairly on inner areas. These are already areas where the population is densest yet where the layers of planning overlays and heritage regulations are highest. In fact, they have done some of the heaviest lifting over the past quarter century – in terms of dwellings and population. By contrast, on the Melbourne fringe, the market is delivering only 17 dwellings per hectare or less. And middle ring suburbs are somewhere in between. Perhaps there is a case for actually introducing regulations that

stipulate minimum dwelling densities in these areas? If the city is to continue to sprawl and eat up valuable agricultural, market garden and environmental land the community deserves to have a greater return/benefit? More, smaller lots with smaller houses and more diverse housing typologies would also cost less. The net impact on housing supply by such a policy change would be substantial.

Principle 3. Coordinate with infrastructure

This principle is good in theory and absolutely essential. However, in practice, both governments and developers have repeatedly avoided fulfilling their infrastructure responsibilities – this is evident in growth areas as much as inner areas. Perhaps there needs to be regulation that ties delivery of new or upgraded infrastructure to new housing approvals. The best way to do this is through a strategic approach and tying infrastructure contributions (developer and government) to sites in areas where development is being facilitated.

Principle 4. Keep the process simple

Simple for whom? Communities, developers, governments? This principle could be interpreted as a rationale for reducing public notifications, community and local government input and third party appeal rights. More recently our experience has been the over use of Development Facilitation Program, with developers going straight to the Minister for Planning. These proposals override established strategic and statutory plans as well as existing permits, which have been the result of long hours of input by community groups, councillors and council officers. Local communities and councils know their areas intimately and are best placed to have input on proposals to ensure that the planning process delivers better outcomes for all. In reality, the process is rarely simple, particularly in established inner areas, because there are multiple factors and issues to consider – for example – from traffic and parking to tree canopy to local flooding, from heritage and local character impacts to overshadowing; from pedestrian movement and access to public transport and other services and infrastructure.

3. Other responses to some of the preliminary Reform Directions:

Reform direction 2.1 Allow up to 3-storey developments across most residential land and Allow mid-rise or high-rise apartments in high-demand areas

State and territory governments should allow up to 3-storey developments across all residential land, with exceptions made for areas with environmental protection, hazard-related overlays or heritage listed buildings only where the benefits of exceptions outweigh the costs.

Allowing taller buildings would give the market greater flexibility to determine the most feasible dwelling types and deliver housing that reflects people's preferences. (Interim Report p.54)–

The issue is feasible for who? Taller buildings are the most costly to build (per sqm) and therefore facilitating higher developments means leaving it to those who can afford the most expensive form of housing – empty nesters, high end market and foreign investors. It does nothing for affordability. Over time it will increase local land and housing prices above what it would be with lower storey developments.

High rise buildings are not good for local amenity and walkability. They create overshadowing, wind tunnels and inhibit tree growth and canopy cover.

Reform direction 2.4 Allow residential development in commercial zones, unless there is a clear rationale for excluding it

There needs to be balance. The system needs to consider a range of uses which are fundamental to the functioning and resilience of our urban areas. It is important to not lose employment land to residential uses, particularly when increasing residential densities within high demand areas. Once lost, it would be very difficult to retro fit for non-residential uses.

Employment uses are important to creating vibrancy and activate streets. There is also a risk of creating conflicts between residential and non-residential uses where there is an incompatibility. In this situation there is a valid concern that opening all commercial zones to residential risks pushing out employment uses due to residential usually being 'the highest and best use' for the land – (e.g. pubs, music venues, restaurants/takeaway food venues, big box retail that is operating 24/7 with deliveries coming and going, sports and entertainment venues; service stations; multi-storey car parks).

Attachment A - Examples of recent new State led planning processes and decisions in the City of Yarra that highlight our concerns with the Productivity Commissions recommended directions.

These examples below highlight the following issues:

- The government use of fast-tracking mechanisms to push through controversial developments demonstrates a lack of public accountability with decisions made behind closed doors.
- Fast track processes (Development Facilitation Program) are being used by developers to get around existing established and approved planning standards and rules, including where there are existing planning permits, to obtain outcomes that increase their benefit (development yield) but impose a cost on the community.
- Developers and the State by-passing local Councils is a backward step. Council is the appropriate authority to make decisions on local residential planning permits. It knows and understands the community, its needs and priorities, as well as being best to assess the cumulative impact of multiple applications within its jurisdiction.
- To continue to pursue densification without regard to liveability or the community's wishes will undermine social license for urban consolidation

1. New Built Form Overlays for some City of Yarra Activity Centres

In July 2026, after years of public consultation to progress the planning and development framework for some of Yarra's key Activity Centres, and much delay where the plans waited for Ministerial sign-off, the Minister approved the new Built Form Overlays (BFO) governing setbacks, heights, parking and other planning issues (Amendment C271). However, the final form of the BFO contained additional height and less setbacks, and an alteration to the Standing Advisory Committee's recommendations from these performance criteria from 'mandatory' to 'discretionary'. As the Committee noted, the only group wanting this change was the developers who have the resources to turn 'discretionary' into whatever they want.

Minister Kilkeny in approving the new BFO also removed the rights of the community to notice and review in the event of any future changes to these overlays. Residents, traders and other impacted parties would not be notified and will not have rights of objection. These key changes were made unilaterally without reference to, the knowledge or the support of the community and represented a betrayal of the years of input that had been made.

Despite the seven-year process to develop the Design and Development Overlays by Council in consultation with the community and the Yarra Activity Centres Standing Advisory Committee, the agreed constraints have been disregarded in the new overlays due to the undemocratic, autocratic pathways in the Development Facilitation Program.

2. Redevelopment on Harry the Hirer site, Richmond

A difficult and controversial project (81-95 Burnley Street and 26-34 Doonside Street, Richmond) that had been referred by the Department of Transport and Planning to Council was due to be considered by the City of Yarra's Planning Decisions Committee. With 687 apartments over four buildings up to 17 and 18 storeys, and minimal open space in an area with constrained access, the development proposal had attracted a large number of objections. In addition, the developer had provided no evidence of a concrete commitment that any of these dwellings would be affordable or social

housing despite it being fast tracked under the Development Facilitation Program for Significant Residential Development with Affordable Housing.

However, despite the City of Yarra Council preparing a report and members of the community preparing their objections, the Minister for Planning simply pre-empted the whole process by approving the project prior to the Planning Decisions Committee meeting. Residents and council were shocked at this treatment, where accepted consultative processes were swept aside, demonstrating contempt for community and democracy.

Decisions about planning permits need transparency, and rules and standards are there to give confidence and provide certainty to the community, to Councils as well as the development industry. When due process is trashed and decisions are made behind closed doors, the integrity of the whole system is at risk. Even the rules under the Development Facilitation Program (fast track) have not been followed properly. This represents an abuse of process and raises the question about whose interest is being served by this decision. In the long run we believe this is in no one's interest. The objectives of the Planning and Environment Act are clear - to provide a framework for authorities to manage urban development and ensure sustainable growth and a net benefit to the community – considering economic, social and environmental factors and outcomes.

3. Former Gasworks site, North Fitzroy

The process of reducing regulation and fast tracking developments under the Statewide planning changes are not delivering the social and affordable housing that is desperately needed. Most developers avoid the guarantee of supplying affordable and social housing by instead paying the 3 % levy. City of Yarra residents' groups have had to campaign hard to get social housing included in projects such as the Fitzroy Gasworks redevelopment.

Recently it has come to our attention that the Government's partners in that project, have walked away from an agreement for 120 social housing units in Block A of the Gasworks site. A contribution or payment of a levy in lieu of affordable housing would not be an acceptable outcome for a development of this scale and prioritisation on publicly owned land.

4. Application at 290 Park Street, North Fitzroy – Fast Tracked

This is an example of why the Great Design Fast Track system should be dumped: bad design; doesn't deliver affordable housing; insensitive to heritage surrounds; minimal community and council involvement and decision made behind closed doors.

Council would normally be the planning decision maker, but because of the developer was approved to use the fast-track program, the Minister for Planning is the decision maker and Council's recommendations can be ignored.

There are valid concerns about the development proposal that warrant close scrutiny and public input:

- An overdevelopment of the site – 20 apartments, retail/café shop, 7 storeys on 598 sqm of land. A more sensitive and appropriate development would be no more than 4 storeys, as per the permit issued in relation to the 2022 application for this site.
- The proposed residential use would conflict with the existing adjacent commercial use. The development would be next door to a popular and successful pub that also operates as a live music venue. The proposed development would overshadow the beer garden and have

windows opening directly facing the pub. Residents would be impacted by noise from patrons arriving and leaving and from the live music. This would be unfair for future residents and create a source of a conflict.

- The development is not respectful of the existing streetscape context which is in a heritage overlay corridor (both sides of Nicholson Street – HO326 and HO327) – Instead it is designed to be visually dominating over the existing streetscape. The development presents a 7 storey streetwall on the corner of Nicholson Street and along Park Street – and creates a visual impression that is not recessive in terms of its mass or scale. (contrary to the guidelines on the Office of the Victorian Government Architect website for good design in a heritage context – “skilled consideration of scale, massing, setbacks and fine-grain streetscapes is critical when designing within a heritage context. A good design response will respect important relationships between a building, its neighbours and its setting.” (<https://www.ovga.vic.gov.au/good-design-heritage-issue-7>))
- Housing supply needs to be considered in its context – in this case an activity centre located within Commercial 1 Zone. It is important that there is not a predetermined outcome where housing supply supplants commercial uses as this would lead to a net loss of employment space over what is currently available. Strategically, with more people planned to be living in Yarra the principles of good planning would suggest increasing employment opportunities. And retaining active frontages that are characteristic of the street is important to maintain activity levels and create a sense of vibrancy.
- The development offers little by way of affordability. Yarra’s strategic position is to remain a diverse community where people from all incomes can find a home. This position has strong community support. While the development plans include 5 one bedroom/studio apartments, there is no guarantee provided that any of these would be affordable to households on a low to moderate income, including key workers (such as school teachers, nurses, police). By way of example, a 7 storey development recently approved under the development in a nearby street is advertising two-bedroom apartments starting at \$1.65 million and a penthouse from \$6 million.

5. 79-81 Victoria Parade Collingwood

Recently fast tracked through the Development Facilitation Program, this 23-storey high-rise development of 500 apartments contains **no affordable homes, and yet the developer has been allowed twice the preferred height (under the brand-new Built Form Overlay)** with nothing given to the community. In architectural terms this high-rise development is at complete odds with its mid-rise neighbourhood, setting a very poor precedent for future development.