

SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY INTO HOUSING SUPPLY REGULATION.

14 October, 2026

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Summary Comments

Regarding the Inquiry process

- *Prejudiced scope and bias: The Inquiry's Terms of Reference are too narrow and leading toward a pre-determined outcome. The report itself suffers from being biased and appearing to be overly influenced by particular organisations.*
- *Flawed starting assumption and inadequate evidence: The Inquiry incorrectly assumes regulation is the major problem in delivering housing, intending to dismantle or significantly reduce it. A number of unsubstantiated statements or assumptions occur through the report. There is an overreliance and acceptance of the statements and concerns of certain groups.*
- *Economic root causes and market drivers are ignored: the housing 'crisis' stems partly from decades of economic policy that turned housing into an investment rather than a basic human necessity. Victorian councils have tens of thousands of approved permits that sit unbuilt. Developers will not build housing unless they can sell at a profit. In reality, the finance market, property industry, infrastructure coordination, cost of construction, construction sector, and workforce availability are the true obstacles to housing delivery - not planning regulations – which are here set up as a scapegoat.*
- *Limited consultation: The lack of consultation and broad base of input and subsequent lack of understanding of some planning matters bring the legitimacy of the Inquiry into question. There is a worrying lack of knowledge in the community that this Report exists – does the Commission care about this?*

Regarding the Recommendations

- *Erosion of public benefit: The planning system was developed to manage private development to protect the wider community interests, safety, equity and to deliver liveable neighbourhoods, a vital function that is being downplayed or dismissed.*

- *Planning reforms suggested are crude and demonstrate a lack of understanding of urban planning: Blanket approaches would deliver homogenised, characterless environments and destroy Melbourne's liveability. Council's need to control the planning systems for their areas to enable sensitive locally responsive solutions. Density can still be delivered in this way.*
- *The very significant infrastructure consequences, particularly of broad based 'up-zoning', are not addressed.*
- *Councils and the community need to be involved in shaping their environment, particularly to ensure community buy-in for densification. Government will lose its social licence if change is rammed through.*
- *Proposals regarding heritage overlay areas are flawed and ignore important considerations. Firstly, Heritage Overlays do not prevent development. Secondly, the economic value of our heritage areas and attractive environments are not recognised. They are significant: they explicitly support and anchor tourism, cultural activity, innovation sector, university and research sectors and community cohesion. Thirdly, they are a key component of Melbourne liveability, not just for those that live in them, but for the wider Melbourne community, building social cohesion and a safe city.*
- *Codification: Introducing standardized rules/codification may be beneficial, but only if they guarantee quality outcomes for the community, undergo genuine community consultation, and are agreed upon by local councils.*

Terms of Inquiry and Scope versus the Real Issues

The Inquiry is prejudiced to produce certain outcomes. The Terms of Reference are too narrow, excluding investigation of major factors. The report itself suffers from being biased and clearly overly influenced by particular organisations (for instance the Grattan Institute and YIMBY). An independent and more comprehensive approach would deliver different and better outcomes.

The Inquiry into Housing Supply Regulation takes as its starting point an assumption that regulation is a problem –this has become a regular rhetoric from certain organisations. The Terms of Reference do not recognize that the major issues around housing delivery particularly affordable housing are economic – the fact that housing has increasingly become an investment rather than a basic 'good' a necessity of life. Economic policy has ignored this growing problem for decades. The operation of the finance market, the property industry, the construction industry, infrastructure coordination and workforce availability itself **are** the problem.

The planning system and regulation are absolutely minor players. The Terms of Reference do not recognise this and the Inquiry appears to be determined from the outset to find regulation the ‘problem’, to be done away with or significantly reduced.

A more balanced understanding of the issues relating to housing construction and the market would enable the Commission to deliver an informed report that could actually provide valuable recommendations to address the real problems and enable development of well designed, liveable communities that have density with appropriate infrastructure, amenity and a sense of community.

The following considerations are also missing or inadequately addressed:

- There is insufficient focus on the housing needs of those at the bottom of the ladder. Increasing housing development in the inner city will never deliver affordable housing. The %age of public housing in the inner city should remain the same – and needs to be funded by the government. Social and affordable housing should be part of regular development contributions as it is, in itself, infrastructure and should not be able to be traded away.
- In Australia, development rights are property of the state not land owners – and they are currently being ‘given’ away without getting benefit back for the community. The report could usefully consider betterment capture, in jurisdictions where density development rights have not yet been given away.
- Proposals fail to take account of infrastructure consequences of large scale up-zoning – the community and the government will bear the future cost and amenity will suffer.
- There is a need to consider other legitimate forms of development contributions as well as user pays levies, impact mitigation payment, and cash in lieu of inclusionary provisions. It is also essential that development contributions benefit the area where development occurs and cash does not disappear into general funds.

Regulation/Deregulation

Public Benefit

The planning system has been developed over time to ensure well-constructed, well-designed development, liveable communities with appropriate location/separation of different types of uses as necessary, to address ‘market’ driven problems, rein in private excess/choice to achieve ‘the public benefit’ benefitting the wider community.

Architecture that fits in with the existing fabric - using an urban design approach, rather than the individualistic ‘look at me’ architectural approach is part of a well-designed community (although somewhat out of fashion with architects). Our neighbourhoods

need to be functional, but also inclusive, sustainable and connected. A bland blanket approach to planning will not provide the all-important fine grain diversity. It is important that local Councils and the community are involved in shaping our environment, our spaces. Developers and centralised government should not be the determinants of our environment. Using the subsidiarity model, decision making should be at the lowest possible level. **It is only with community input and involvement that buy-in for densification can be achieved and maintained.**

Operation of the Planning System

It is probably correct to say that the time taken to get a permit in some cases is too lengthy and this increases costs. However, the answer to this is to improve the system, not dismantle the regulations. Would you take speed limits away because policing them is difficult? Undoubtedly there was and is room for improvement in the system. There is however, (or was, in the case of Victoria) much that is good.

The introduction of codification is therefore welcomed in theory, though the rules and regulations introduced must be adequate to ensure quality outcomes, and should be properly consulted on and agreed by the community and Council. Once accepted they can be rigorously applied, without negotiation behind closed doors.

Increasing (rather than decreasing) the number of staff is another – for instance I believe there is only one heritage planner in the City of Yarra where nearly every application has heritage implications, that causes a problem.

Ironically, freeing up of the system in terms of removing mandatory heights limits and other mandatory aspects leads to significant and increased delays and costs due to uncertainties and expectation value. As stated by others, ‘A planning system that delivers certainty, transparency, accountability and timely decision-making, would reduce costs, improve productivity and enable more homes to be delivered more quickly while maintaining appropriate environmental protections, infrastructure standards and community safety outcomes....’¹

Recent Planning System Changes in Victoria

In Victoria we are experiencing the impact of the adoption of some of the proposals set out in the Interim Report, such as fast-tracking approvals, simplifying/codifying planning controls etc. In early 2026 the Planning Amendment (Better Decisions Made Faster) Act received assent.

The new system, or lack of system, which places significant power in the hands of the Minister for Planning, has had a number of negative consequences:

- It is undemocratic – having removed community and local council input;

¹ Submission 8.

- is open to charges of corruption – decisions made behind closed doors;
- it is inequitable - it involves a 2 level planning regime, one for developers with influence and one for the rest;
- it is not providing the infrastructure that will be required;
- and, worst of all, it is not delivering the housing it is supposed to be intended for.

Some developers are seeking permits solely to increase property/site resale value rather than to build. Consequently, land often remains undeveloped for long periods, stalling housing delivery. Sites are being ‘flipped’ sold on without being developed, after increased height adds significant value which accrues to the land owner – with no benefit coming to the community and no housing eventuating.

“Across NSW and Victoria, the changes to planning systems to speed up approvals don’t seem to be producing the completions we’re expecting of them – and there’s a lot of unhappiness around the quality of what has been delivered,”² -

In Victoria there has been a shift from mandatory controls to discretionary and, in recent times, this extends to the Minister’s arbitrary discretion without any oversight. Alternatively, mandatory controls can provide certainty for developers and the community, transparency, reduces processing time and reduces speculation and land banking.

Discretionary height limits increase speculation and land values, and hence cost of housing, through ‘expectation value’. ‘When land is bought and sold under a discretionary regime, vendor and buyer expectations bypass the "preferred" height. Instead, they price the land based on the maximum plausible height they think a planning tribunal (like VCAT in Victoria) or council will approve.’³ And ‘Escalation of Land Speculation: If a planning scheme states a preferred height of 6 storeys, but recent local precedents show developers successfully pushing to 10 storeys, the market will value similar sites based on a 10-storey yield. This creates an artificial floor price for land that locks in high density before a single brick is laid.’⁴ ‘While planning authorities prefer discretionary controls because they allow for urban flexibility and contextual design, the financial byproduct is a speculative premium. When land values are inflated by these "increased expectation values," developers are structurally forced to push for the

² David Hayward, an emeritus professor of planning and economics at RMIT University - The Age - <https://www.theage.com.au/national/victoria/failed-miserably-go-slow-on-fast-track-program-ties-up-thousands-of-homes-20260327-p5zjb4.html>

³ <https://udiavic.com.au/wp-content/uploads/2020/02/170201-Policy-Position-supporting-discretionary-heights-UDIA.pdf>

⁴ <https://www.feasly.com.au/guides/building-height-restrictions-setbacks-australia-developer-guide>

absolute maximum heights possible just to make their initial land purchase financially viable.’⁵

Discretionary and variable regimes also cause planning blight through speculation – property owners with unrealistic hopes of land value increase or future development terminate leases or increase rents to get rid of tenants and then nothing happens – leading to vacancies, dead sites and dead shopping strips.

As the Municipal Association of Victoria says:

‘The State Government’s rushed reforms deliver the worst of both worlds: there still won’t be enough homes built, and those that are built will fail the next generation.

Faster approvals don't necessarily mean faster construction. Victorian councils have issued tens of thousands of approved permits that sit unbuilt. Construction finance, skilled labour, infrastructure coordination, tax settings, material costs – these represent real constraints on supply. Rushing and designing reforms without the people who must deliver them guarantees failure. The homes that do get built will lack infrastructure, affordability, and protections against floods, fires and weather extremes. Councils support more homes. We don’t support cutting corners that create massive problems for generations to come.’⁶

Housing and Affordable Housing Delivery Results following ‘Reform’

In Melbourne, despite permits being granted with major increases in densities, development is not occurring. Not one of the approvals given under the Development Facilitation Program has been started. Sites are being ‘flipped’ sold on with their permits, delivering huge profits for individuals/companies without delivering housing or indeed, any benefit to the community. Developers will not build housing unless they can sell at a profit – and at present the housing industry is not delivering. This is not the fault of the planning system or planners, or councils.

Affordable housing outcomes: Unfortunately, most of these approvals and proposed developments, when they happen, will do little for the supply of affordable or social housing because the development industry is focused on developments for the “cashed up” investor. A recently approved Fast Tracked development proposal (note: under a Heritage Overlay) is marketing 2 bedroom units at over \$1.6 million⁷, and a penthouse for \$7 million – not exactly affordable housing. This demonstrates the failure of

⁵ <https://vgls.sdp.sirsidynix.net.au/client/search/asset/1283435>

⁶ Municipal Association of Victoria – Facebook post.

⁷ <https://www.domain.com.au/301-rae-st-fitzroy-north-vic-3068-2021220580>

Development Facilitation in delivery of affordable housing. Disposing of heritage controls will not change that either.

Infrastructure

The Interim Report correctly identifies coordination of infrastructure as being a major factor in facilitating development and delivering liveable neighbourhoods. It is also a major issue that is yet to be addressed where densities are increased. How, where and when is the necessary infrastructure is to be provided for the additional population? And indeed how can new open space be provided for new populations. The new planning regulations in Victoria are not delivering on this.

Summary Comment on Selected Interim Proposals

- Reform direction 2.2 Allow mid-rise or high-rise apartments in high-demand areas
- Reform direction 2.5 Replace broad heritage protections with more targeted heritage listings with cost-benefit analysis and review processes. Blanket heritage areas should be replaced by heritage listings for specific buildings or small areas. Targeted heritage listings should be justified by cost-benefit analysis and there should be more robust mechanisms to review and delist buildings.

Interim Report Proposals Regarding Densities – Mid-rise and High-rise

When advocating mid-rise and high-rise in high-demand areas, the impact on liveability and what makes these high-demand must be considered by the Commission. Streets in Yarra are safe and attractive because of the numbers of people on the streets - high-rise takes away sun, creates wind and bleak corridors in narrow streets with the result of streets empty of people and life (see Southbank). Mixed use low to mid-rise can however, successfully produce dense neighbourhoods.

Despite some comments elsewhere, Yarra already has high densities compared to other cities in Australia and is quite high by world standards. The City of Yarra has been managing to accommodate high density buildings well and had developed, in consultation with the community, design and development overlays to manage new high-density development. The Minister for Planning changed proposed mandatory requirements to discretionary, which increases uncertainty, tends causes land value expectations to increase and takes longer time to determine applications. These recently agreed Built Form Overlays have also been ignored in recent approvals randomly given by the Minister for Planning through the Development Facilitation Program.

In stripping away community rights, governments risk losing their social licence, which must be continuously earned through trust, transparency and shared benefits ⁸

Interim Report Proposals. Heritage Overlay Areas

The recommendations related to heritage places are ill-founded, unrealistic and would be deeply concerning to the community (if they knew about them, which they don't due to lack of consultation). Important factors are ignored or misrepresented. The idea that somehow proposed heritage controls can be assessed on a cost-benefit basis is nonsense. Economic analysis is undertaken when a development is proposed, see for instance, the context of the Victorian Planning Schemes. The Interim Report reveals a lack of understanding of the importance and the role of heritage in Melbourne. Also revealed are the close ties between the YIMBY's who promote this thinking and the Commission.

The heritage controls in the planning scheme are well founded and strongly based. Victoria's position as a leader in heritage conservation and knowledge is a result of significant community concern over the previous loss of important buildings and environments. Rapid introduction of intrusive inappropriate development in the 1960's and 70's led to an upsurge of protest and the introduction of heritage and neighbourhood character controls.

Extensive soundly based strategic planning, public consultation and independent review underpins the heritage controls, such as heritage overlays in planning schemes that are in place now and have had the support of successive governments for decades.

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Heritage areas cannot be discarded lightly and without justification – it would be short-sighted and unnecessary. **The government risks losing its social licence if it pursues these policies.**

Key points in regard to the heritage protection of properties and places and its impact on the supply of housing:

- Heritage Overlays do not prevent development
- Heritage has significant economic value, particularly to Melbourne and Victoria.
- Heritage areas are a much-valued community asset.
- These recommendations in the Interim Report as a serious overreach – unnecessary, inappropriate and shortsighted.

⁸ <https://www.aicd.com.au/company-policies/corporate-social-responsibility/socially-responsible-companies/social-license-to-operate.html>

⁹ Ray Tonkin submission.

Most Importantly - Heritage Overlays do not prevent development

It is a misrepresentation to suggest that such controls prevent development or set out to deny the development of land supporting non-significant properties. The controls ensure that development on any property retains important features of that property or the precinct and doesn't overwhelm the significance of the place. If the provisions of the planning policy and guidelines are met a permit issues.¹⁰ It is noted that although 70% of properties in Yarra are covered by Heritage Overlays, between 2001 and 2021 there were more than 17,200 'other dwelling' (not houses) approvals. And over the same period the population increased by 33,400 persons.

It should be noted that the lot sizes and fine grain form of development in most of the Heritage Overlay Areas would in themselves present constraints to development. Blocks characteristically tend to be very narrow, sometimes in terraces with shared walls.

It can be seen that many inner Melbourne Councils, such as the City of Yarra, have encouraged and permitted housing development and have generally met housing targets set by the Victorian Government. Developments have been strategically focused on particular areas and have avoided a patchy piecemeal approach throughout the area.¹¹

Economic Benefits of Heritage Areas

Heritage has significant economic value. The report ignores the economic value of heritage precincts (individual heritage buildings do not do this). As the City of Melbourne says: 'Distinct character and city identity is vitally important to attracting visitors and investment...Heritage places help make cities more people-centred, more sustainable and more resilient to changing economies, ensuring the amenity, human scale and tactility of the city. Retention of heritage buildings helps to ensure a greater diversity of tenancies, businesses and household types, providing the city with different land uses and communities.'¹²

Melbourne's renowned heritage areas have many economic benefits:

- Fundamental attraction for tourism visitation.
- Neighbourhoods of 19th and 20th century buildings make huge contributions to Melbourne's international reputation for liveability.
- Melbourne's 'liveability' is a significant component of attraction of highly skilled workers and global investment.

¹⁰ Ray Tonkin's submission.

¹¹ IBID.

¹² <https://www.melbourne.vic.gov.au/heritage-matters>

- Heritage areas and attractive environments support and anchor its thriving innovation sector. Innovation districts thrive on compact, walkable, and character-rich environments rather than modern sterile environments.
- Old fabric of heritage buildings and fine grain sites and laneways offer appropriate floorspace and footprints to support marginal and start-up businesses, and maintain the quirky businesses and activities that are part of inner Melbourne's attraction.
- Inner Melbourne's heritage areas—such as the Victorian-era streetscapes of Carlton, Fitzroy, and the CBD's iconic laneways—provide the "sense of place" and visual identity that major global entities use to recruit talent. 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, vibrant streetscapes, and proximity to cultural amenities. Our heritage areas and activity centres offer the sort of precincts where innovation thrives.

If we ignore this we are risking our economic future.

Social Value of Heritage Areas

- Heritage, and sense of place play a big part in social cohesion which in itself also has an economic value.¹³¹⁴
- UK research from [Historic England's Heritage Counts](#) indicates that traditional architecture and cohesive older streetscapes/areas consistently score higher in perceived quality, beauty, and safety than isolated contemporary interventions or piecemeal development. Also in London over 80% of people were supportive of conservation area protection (broad scale protections). Similar data is not available for Melbourne, although anecdotal evidence is strong.

Other Heritage Issues

Adaptive reuse of older buildings is also environmentally sound practice. Retaining heritage spaces supports the innovation sector's climate initiatives by locking in embodied energy and reducing the carbon footprint of building new infrastructure. New building is not built to last and will need to be rebuilt in a relatively short time – using more resources.

¹³ <https://oicd.net/post?slug=the-social-cohesion-dividend-why-unity-isn-t-just-a-nicety-it-s-an-economic-necessity>

¹⁴ <https://www.aihw.gov.au/reports/australias-welfare/social-cohesion-and-social-connection>

Previous heritage work

I understand that the Productivity Commission Report, Conservation of Australia's Historic Heritage Places, 2006, dealt in detail with listing and approval processes and made recommendations about the value of heritage areas and precincts over the value of single listings. The report's findings were not universally applauded but provided a well-researched understanding of the system/s and their value to the community. This should be revisited to benefit current work.

See also The Allen Consulting Group Valuing the Priceless: The Value of Historic Heritage in Australia; report prepared for Heritage Chairs and Officials of Australia and New Zealand, 2006.¹⁵

Consultation Issues

It seems that consultation in preparation of the Interim Report has been minimal or restricted to certain sectors of the economy. The public also has little to no knowledge of the Report.

To what extent have local governments been approached to provide advice? The City of Yarra did not seem to be aware of this work going on. Councils are the managers of the planning system and operating at the coalface. They are on the ground and have experience and an excellent understanding of the way in which the development industry works. I believe that the State and Territory Heritage Councils have not been consulted, an extraordinary omission, if that is so, given the major heritage recommendations. They, staff and advisory bodies, can provide practical advice on the workings of the heritage protection system/s which appear to be not well understood by the Commission.

The recommendations relating to heritage controls are causing surprise and consternation. Many professionals were not or barely aware that the Inquiry was underway, never mind that it was looking at such significant changes. The communities affected and many others would be appalled to hear what is proposed. Major public consultation is required before such sweeping, and unsubstantiated, changes are taken forward.

In Conclusion

I trust that the Commission will reconsider its recommendations, particularly around Heritage Overlays. Thank you for the opportunity to comment.

Sally Vivian

¹⁵ Ray Tonkin's submission.