Australian Government
National Housing Supply and Affordability Council

NATIONAL HOUSING SUPPLY AND AFFORDABILITY COUNCIL

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Productivity Commission inquiry on housing supply regulation

National Housing Supply and Affordability Council submission

The National Housing Supply and Affordability Council (the Council) welcomes the Interim Report of the Productivity Commission on housing supply regulation (the Interim Report).

The Council supports the focus of the inquiry on how regulations can be improved and reformed to improve productivity and boost housing supply. In its State of the Housing System reports, the Council has provided advice on how housing outcomes could be improved across a range of regulatory systems. This includes recommendations to lower regulatory barriers to modern methods of construction to promote greater innovation and productivity in housing construction. In addition, the Council recommends that planning systems should be outcomes based, and that development assessment should be separate from strategic planning and policy development.

Planning systems should also have clear statutory decision timeframes and end-to-end digitisation of planning approvals.

The Council also supports greater housing density, improved infrastructure funding and coordination, and more transparent development-contribution arrangements.

In addition, the Council has a role monitoring progress towards the National Housing Accord target to build 1.2 million new homes. In the latest August 2026 Quarterly Report, the Council highlights good progress has been made on building approvals and commencements over the National Housing Accord period. Quarterly building approvals have risen by 26% and quarterly commencements have risen by 15%, in the latest data compared to the quarter just prior to the National Housing Accord period. There were 244,000 dwellings under construction in the March quarter 2026 (most recent data). This was the highest result since records began in 1984.

Currently, the Council estimates the 1.2 million target will be reached in December quarter 2030. All states and territories have implemented a range of initiatives since the start of the National Housing Accord to increase supply. Over time, this could potentially support an acceleration of progress. The Council's Quarterly Report provides an overview of the initiatives announced by governments to boost supply and supported by the Council.

The Council has identified six further priorities for governments as part of the Productivity Commission's inquiry:

1. Understanding of development rights in Australia
2. Zoning and housing development capacity
3. Performance based planning
4. Development contributions
5. Social and affordable housing and the planning system, and
6. The Australian Government's role.

Understanding of development rights in Australia

The Interim Report conceptualises land use and development regulation in terms of:

- Mitigation of negative externalities and creation/protection of positive externalities, and
- Co-ordination of agents involved in urban development to support efficient supply of infrastructure and public goods (like parkland).

The Interim Report does not discuss an additional role of land use and development regulation which is to manage access to state and territory reserved development rights. Australia is reasonably distinct amongst comparable advanced economies, and particularly in respect of the United States, in that development rights are almost entirely retained by the State; they do not attach land ownership[1].

Compensable rights to use or develop land for purposes other than current lawful uses are only secured upon the granting of a development application/planning permit. With very few exceptions, zoning does not confer development rights and planning scheme provisions for any land can be changed at any time by the state or territory without notice or compensation. This makes development rights in Australia analogous to other state and territory reserved property rights such as minerals, water, natural fisheries, forests and the like.

This is material to housing supply regulation. In the framing of planning provisions and in determining development applications, state and territory and local government authorities regularly require proponents to pay for development rights, in the form of cash or other asset transfers which will benefit the community. Examples include:

- The Growth Area Infrastructure Charge (GAIC) in Victoria which, notwithstanding use of the term '*Charge'*, is simply a flat tax on the uplift in value when land is converted from non-urban to urban use.
- Requirements for proponents under the NSW Housing Delivery Authority (HDA) pathway to include affordable housing contributions

[1] See Alterman. R. et al (2010) Takings International; A Comparative Perspective on Land Use Regulations and Compensation Rights ABA Press, and
O'Connor, P. (2010) The Changing Paradigm of Property and the Framing of Regulation as a 'Taking' Monash University Law Review 50

- The codified Lease Variation Charge scheme in the ACT, and
- Floor Area Uplift schemes which apply in various guises around the country. By way of illustration, proponents wishing to secure additional height above a plot ratio of 18:1 for projects in Central Melbourne must provide an in-kind community benefit equivalent to 10% of a codified gross realisation value per square metre for the additional floorspace.

These examples represent formalised, pre-notified, policies. In many circumstances, planning authorities seek fair value for the development rights on offer through case-by-case negotiation, which adds uncertainty, risk and delay to the approval process.

The Council recommends community capture of part of the value of development rights awarded through the planning system should be duly recognised, regularised and simplified to improve the efficiency of the approvals process.

Zoning and housing development capacity

The Council agrees with the Interim Report that to optimise supply, zoned capacity for development of housing should only be reduced if the benefits from the restriction outweigh the costs.

The Council's view is that governments should prioritise sites with the greatest feasible housing capacity, focusing reform effort where additional housing is most likely to be commercially viable and supported by infrastructure.

The Council considers that placing too much of an emphasis on broad-based up-zoning could potentially divert focus from specific locations where feasibility and demand may be greater.

The Council recommends that cost benefit analysis (CBA) should be applied when creating a planning scheme. This cost benefits analysis could answer questions such as:

- How should limitations in fiscal capacity of local governments and other infrastructure providers be treated? Should available development capacity be kept within the bounds of current infrastructure supply capacity, or should more capacity be made available under planning schemes provided proponents are prepared to fully compensate infrastructure providers for additional capital and running costs?
- What weight should be given to the monetised benefits of a long-term land use vision? For example, retained landscape, biodiversity, lower infrastructure costs, reduced motorised travel etc. under a more compact pattern of development enforced via an urban growth boundary – versus foregone housing development opportunities in the near term?
- What limits, if any, should be placed in a CBA on consideration of intangible welfare impacts such as those attaching to urban design quality and neighbourhood character,

notwithstanding willingness to pay for such attributes amongst at least some in the community?

A key input into any CBA will be assumptions regarding the extent to which an increase in zoned capacity will translate into net additional housing supply, other things equal. The Council has factored the findings of the Grattan Institute on this question into supply forecasts for NSW and Victoria. The Council assumed that, after a transitional period, 0.7% of additional zoned capacity would be realised as extra housing each year. This relies on empirical evidence from Auckland, where conditions may differ to those in Australian cities, although it is consistent with the 0.5–1.0 per cent range found in other relevant literature.

The Productivity Commission's planned modelling work could explore the extent to which zoning acts as a binding constraint on aggregate housing supply, as distinct from the spatial distribution of supply, in Australian cities.

Performance based planning

The Interim Report calls for more efficient regulatory design but does not provide a clear specification for it.

The Council recommends that governments should commit to long-term structural reform of planning and development assessment systems. The Council recommends a performance based approach to reduce discretionary judgement and progressively extend deemed to comply provisions. This comprises:

- Clear articulation of ***performance outcomes*** for design expressed in terms which are amenable to objective measurement or at least to (mostly) uncontroversial technical adjudication, plus
- A set of default ***deemed to comply provisions***, which would only be applied if a proponent's alternative scheme is objectively or technically assessed not to deliver the required performance outcomes.

Mostly, the key failure in the design of planning regulations rests in poorly specified performance outcomes. This leads to avoidable disputation, risk and cost as proponents endeavour to define what it is they are expected to achieve, bearing in mind they face an imperative to keep project delivery costs under control.

In this context, the main lesson from the 'Best Apartment' example given in Box 1.4 of the Interim Report, is that the NSW Apartment Design Guide could be recast and refined so that performance outcomes and deemed to comply provisions are conceptually separated and less open to interpretation. On this basis, the same content could be applied without rendering projects like the Swartz design referred to in Box 1.4 as non-compliant.

The Council also recommends establishing skilled independent assessment panels for development assessments. This removes discretionary judgements and improves the

consistency and transparency of development assessments. The Council also considers that incentivising the transition from paper-based to digital planning and assessment systems within a defined implementation period (e.g. five years) will deliver substantial gains in timeliness of development applications and assessments.

More generally, the Council has developed a set of best practice principles for design of planning regulations. These are summarised below.

PLAN MAKING	
Subsidiarity	Responsibility for formulation of zones, guidelines and rules should be aligned with the breadth of spatial impact and wider regional or State significance of the matters under consideration.
Infrastructure co-ordination and providing capacity for development	Statutory plans should be derived from long term strategic plans which, amongst other things, have due regard to the efficiency of infrastructure provision. They should also ensure that there is sufficient feasible development capacity at the State, regional and local levels to support an efficient and responsive development sector
Urban design	Incremental development should aggregate to suburbs, neighbourhoods and precincts which are liveable, efficient, expressive of place and sustainable.
Net community benefit	Planning regulation should be *efficient* in the sense of welfare economics; marginal benefits from proposed statutory plans versus a business-as-usual base case should exceed marginal costs at a reasonable discount rate (see further discussion in the following pages).
Performance based regulation	Regulation should allow full use of the developable capacity envisaged in strategic plans and precinct master plans. This requires that outcome expectations for site development in terms of on-site amenity and off-site impacts are expressed quantitatively as far as possible. Proponents should have the opportunity to meet these outcome requirements through their own solutions and designs rather than being compelled to comply with inflexible prescriptive rules. Proponents unable or unwilling to present their own solutions to meet the design performance requirements would be obliged to comply with a default set of design requirements, otherwise known as deemed to comply provisions.
Contributions for shared infrastructure	If infrastructure contributions are applied premised on a user pays logic, they should reflect the cost of providing facilities and services to support the adopted planning vision for a development area or district.
Inclusionary requirements	All buildings should incorporate on-site, or through in lieu arrangements for off-site provision, key amenities, design features and facilities to ensure that cumulative development is sustainable, functional and efficient.
Value sharing	The uplift in land value associated with the granting of development approval should be substantially captured by the community for re-investment in infrastructure to support development.
DEVELOPMENT ASSESSMENT	
Risk based development assessment	The level of scrutiny required of individual development proposals should be proportionate with the degree of anticipation of such projects in the adopted planning vision for an area.

Separation of policy making and development assessment responsibilities	Formulation of planning policy and the attendant statutory rules should be the preserve of democratically mandated forums, while assessment of individual applications against those rules may be left to technical experts.
Applying for planning approval	The planning approval process should reflect mutual responsibility on the part of proponents and planning authorities for timely decision making .
Digitisation	Paper-based plans, codes and policies should be eliminated.
REVIEWS	
Review authorities	Proponents and objectors should have defined recourse to an independent appeal body if they are not satisfied with a determination.
Limits on appeal rights	The scope of appeal rights should be dependent on the degree to which relevant project attributes have been resolved in the plan making phase.
Privately initiated amendments to planning rules	Privately initiated changes to planning laws (zones and rules) should require prior approval from an appropriate democratically mandated authority before they can proceed to assessment.

Development contributions

The Interim Report commences discussion of development contributions – the Council recommends it is further developed for the final report. The Council notes the Interim Report's finding that these contributions are generally passed backwards to land sellers rather than forward to end buyers is well evidenced.

The Interim Report focusses on one type of development contribution. This relates to a 'user pays' rationale; proponents can reasonably be required to contribute to planned off-site infrastructure in accordance with their projected share of usage of these facilities and services. As the Interim Report notes, applying this usage nexus principle would result in a price signalling effect; locations where the marginal cost of extending or upgrading enabling infrastructure is less would offer development opportunities at lower delivery costs, at least as far as contributions are concerned.

As well as user pays nexus, legislation and case law show that three other principles could reasonably justify development contributions. These are mutually exclusive from and additive to user pays nexus. They include:

- ***Impact mitigation principle:*** the proponent should make good any *unanticipated* impacts on infrastructure, that is costs that could not have reasonably been foreseen and factored into regular user pays contributions. For example, if the proponent is proposing an impervious site area above the level used in the planning of the local drainage network, they could reasonably be required to pay 100% of the cost for an off-site retarding basin to avoid downstream flooding, even if subsequent proponents may take advantage of this infrastructure once in place.
- ***Inclusionary requirements principle***: the proponent could reasonably be required to pay for off-site provision of facilities and services which would otherwise be a standard

requirement for on site design. Examples include car parking, public open space and retention of stormwater flows to predevelopment levels (assuming that these standards are shown to be warranted following cost-benefit analysis).

- ***Value capture principle:*** the proponent could reasonably be required to provide a community benefit in cash or in-kind proportional to the uplift in land value associated with the granting of development approval because, as noted, ownership of the development rights rests with the community rather than proponent or the site holder.

It is important these four equally justifiable reasons for requiring development contributions are untangled in the design of planning regulations. This will improve transparency, make for better pre-discovery of a proponent's obligations and reduce the scope for disputation and lengthy, risk laden, negotiations in the development assessment process.

Social and affordable housing and the planning system

The Council regards social and affordable housing as essential infrastructure for successful suburbs, neighbourhoods and towns. This is premised on the extensive external benefits generated by local availability of social and affordable housing.

On this basis, social and affordable housing can be treated similarly to, say, public open space for the purposes of development contributions. That is, contributions can be justified under the inclusionary requirements principle outlined above. Like all other contributions, those for social and affordable housing should be operated efficiently with the lowest transaction costs possible. Hence the Council has called for universal, uniform and low contribution rates noting that current contribution arrangements for social and affordable housing are haphazard and inconsistent, resulting in only small amounts of social and affordable housing.

The Council considers that if the inclusionary requirement for social and affordable housing is set at reasonable level, this cost will be borne by the land seller and will not compromise market supply.

It should also be noted that the proceeds from value capture arrangements could also be deployed to social and affordable housing provision. Where this occurs it should be codified, transparent and distinguished from concurrent development contributions premised on other grounds, namely, user pays, impact mitigation, or off-site satisfaction of inclusionary requirements.

The Australian Government's role

The Interim Report proposes that the Australian Government could play a role in bridging funding gaps for critical enabling infrastructure. Notwithstanding that the Australian Government is implementing its Local Infrastructure Fund program, long term involvement of the Commonwealth in project-by-project financing poses many challenges.

The Council's view is that funding enabling infrastructure for housing is predominantly the responsibility of state and territory governments. Where gaps arise in infrastructure the Council notes a range of mechanisms are currently available at the state and local government level. For example, the constrained capacity of local governments to match user pays development contributions to deliver key infrastructure could be considered through reform of rate caps. Gaps that arise due to lot fragmentation and first mover risk could be addressed through the deployment of state land development corporations to consolidate parcels and absorb development timing risk.

Involvement by the Australian Government on infrastructure funding on a project-by-project basis carries delivery risks and would involve joint accountability across multiple levels of government. The Council recommends the focus of the Australian Government should be on providing incentives to the states and territories to make structural reforms to address infrastructure funding problems at their root.