Submission to the Productivity Commission

Housing Supply Regulation Inquiry

Response to the Interim Report of 27 July 2026

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Designer and Builder of environmentally responsible prefabricated modular housing - 27th August 2026

Executive summary

This submission is made by a builder who started building things in the early 1980s, who has become an advanced technology prefabricated building manufacturer and is a former registered architect with forty-five years in the industry. It comes from the standpoint of the small scale builders and off-site manufacturers who deliver most of Australia's homes. It supports the Commission's draft best-practice principles and asks for two things to be added to them: that the regulatory burden be measured as the builder experiences it — all at once — and that every planning number be made to show its working and be scientifically checked for performance and utility.

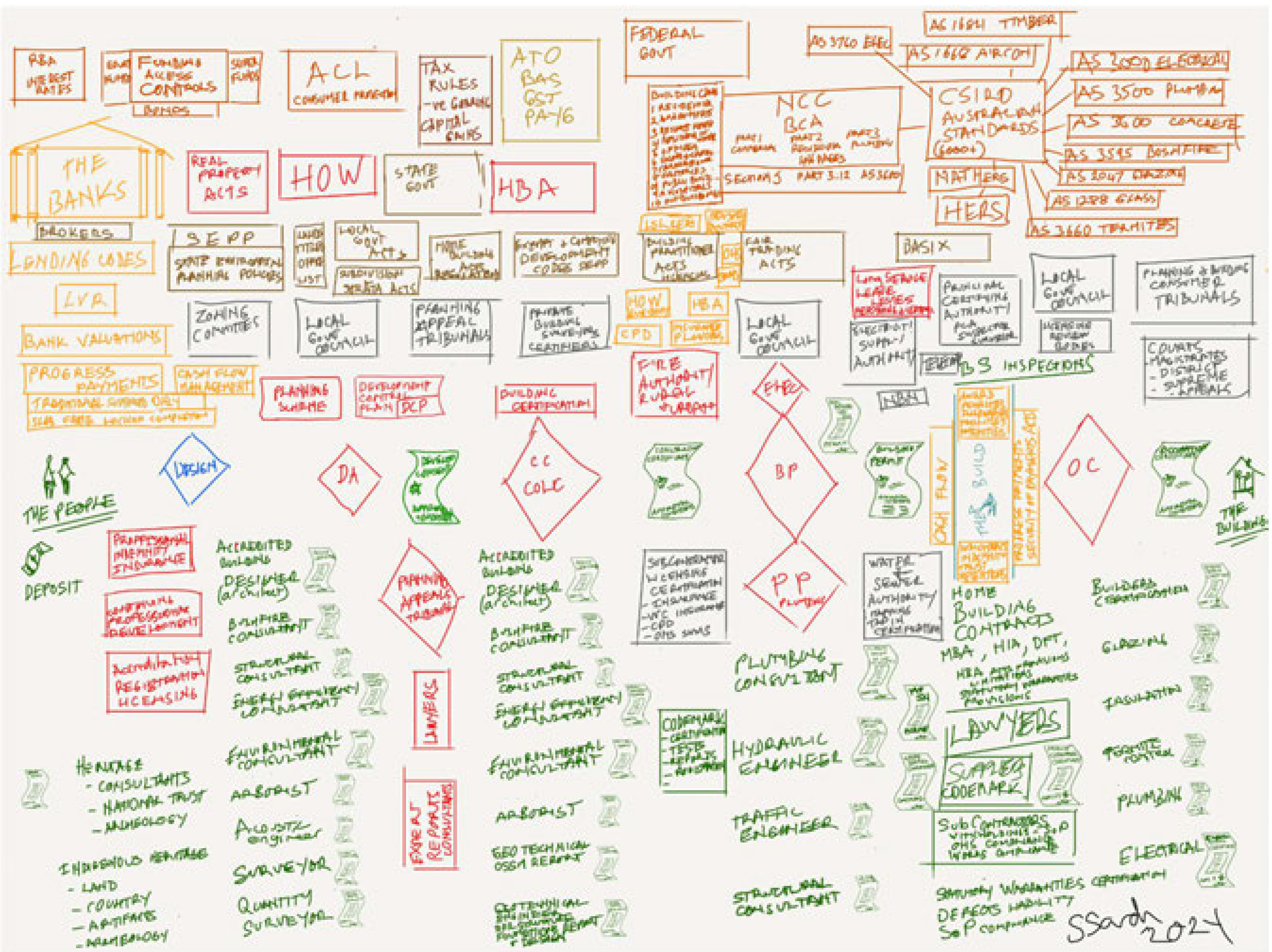

Figure 1 — The regulatory environment of a single home build, as drawn by the author, 2024. Presented deliberately in its raw form: this is the shape of the system as any practitioner must hold it in her head.

What we are saying:

- **The burden is cumulative and nobody adds it up.** No authority or body in Australia catalogues, prices or evaluates the regulatory load on a single home build across planning, building, safety, licensing, insurance and tax at once. Five reviews are running in parallel, each scoped to exclude the others. A system reviewed in pieces is reformed in pieces, ineffectually I would argue. (Section 2.2; Appendix A.)
- **It is being carried by the people least equipped to carry it.** 98.7 per cent of construction businesses employ fewer than twenty people and build about three quarters of the nation's dwellings; the administrator and the builder are usually the same person. In 2023–24 the industry recorded 2,975 insolvencies, 27 per cent of all corporate failures. (Section 2.3; Appendix B.)
- **On a real small project, most of the cost is not the building.** Our own records put about 63 per cent of the delivered cost of a small dwelling outside construction. A two-dwelling terrace infill in a designated growth area was notified to 570 households, refused on twenty grounds, and carries an estimated twelve months and a six-figure sum before a trade attends the site. (Section 2.4; Appendix C.)
- **Every planning number is untested, and the assumption beneath it is that what exists, is what should be permitted.** Heights, floor space ratios and lot sizes are derived, as far as can be determined where any derivation is published, by measuring what is already built. No planning instrument that in can find has ever been evaluated against its objectives; none is subject to a regulatory impact statement; none sunsets. The floor space ratio itself entered New South Wales law in 1957 as a device to prevent additional accommodation on high rise building. (Sections 2.6–2.8; Appendices E, F, G.)
- **The words used to refuse are undefined where they are applied.** "Design excellence", "desired future character", "sympathetic infill" and "high quality urban form" each began as a tool for something else — a central-Sydney tower bonus, a zone-less experimental plan, a conservation-charter note since withdrawn, a plan aim copied between councils — and none is defined in any instrument, measured by anyone, or required to be applied by a professional with any design, heritage or planning qualification — while every person who acts on the resulting consent, from consultants, architects, certifiers to builder, is qualified, licensed or registered by statute. (Response 3.1.2; Appendix K.)
- **Heritage conservation areas are the same untested assumption at scale.** About a quarter of residential land within ten kilometres of central Sydney is heritage-protected, most of it by blanket area, created without a statement of significance for the properties captured, without cost-benefit analysis, and without compensation — the arrangement this Commission found "often ineffective, inefficient and unfair" in 2006 and finds again now. (Section 2.9; Appendix H; response 2.3.)
- **The construction code shows what scrutiny looks like.** The National Construction Code is written by a public body, exposed to impact analysis, free to read, and was paused in 2025 when its cumulative burden was judged too great. Despite being rebuilt every year or two to the detriment of the industry. Nothing on the planning side has ever had that treatment. Licensing, warranty insurance and the eight-state borders, add a further layer no one has costed. (Sections 2.10–2.11; responses 3.2.1–3.2.2.)
- **Prefabrication is the productivity gain the system cannot process.** A dwelling 80 per cent complete in a factory fits no approval, inspection or finance gate in a huge, inflexible system evolved solely for site building. The remedy exists in other fields: Motor vehicles for example -type-approve the model once, nationally, as vehicles are, specific to their intended role, and confine the per-site questions to siting, footings and connections. (Section 2.5; Appendix D; response 2.1.3.)

What we ask the Commission to recommend

- **One rule for both sides of the counter.** Every development standard, and every heritage designation, should be supported by a stated derivation and published evidence prepared by the authority that sets it, the same discipline already demanded of every applicant who departs from one. It removes nothing from any council; it asks only that the assumption be examined, rationality applied and the working shown. (Section 3.)

- **Proportionate process, measured whole.** A best-practice principle — assess the burden cumulatively — with a legislated proportionality test, incorporating a stated purpose to assist in getting housing built, so that a modest residential cottage is not processed like a multi-storied tower block; small housing in a code or pattern-book tier with binding pre-lodgement advice relevant to scale; technical questions decided by people qualified in them; a compulsory amendment pathway before any small application is refused; and metrics that track the whole approvals period clock and costs, including refusals and appeals. (Responses 1.2, 3.1, 3.4.)
- **A housing delivery authority, and the clerk of works.** A national or state authority that carries the desk — planning, referrals, approvals, insurance, contracting, payments — so that the builder builds; paired with the Building Confidence report's recommendation for independent, trade-qualified verification on site. Paper controls removed, physical verification strengthened. (Sections 2.13 and 3; Appendix I.)
- **Regulate the regulator.** Every assessment report to state the assessing officer's planning qualification or its absence; delegated determinations confined to qualified, certified planning and relevant referral professionals; a national registration scheme for planners through the Planning Ministers' Council; and reasons for discretionary approvals to the same standard as for refusals. (Responses 3.1.2 and 3.4.6a.)

These four quick wins need no legislation:

- correct the classification of the section 68 pathway to allow permanent prefabricated homes;
- require an amendment pathway before first refusal of all small applications;
- accept govt and authority-held site data in place of applicant-commissioned duplication of reports;
- adopt the draft Statewide Community Participation Plan for compliant small housing.

Declarations. :

The presentations and case studies in this submission are drawn from projects the author manages or has managed, and that interest is declared wherever they appear.

This submission was prepared with the assistance of an artificial intelligence research assistant working under the author's direction; that fact is declared deliberately, because it forms part of the evidence offered in response to information request 3.4. The author understands that submissions are published on the Commission's website.

The author entered bankruptcy on the 20th February 2026 following a final appeal hearing application of a six year court case was declined.

The author's registration as an architect ceased on 1 July 2026; this submission is not made, and no part of it is issued, in the capacity of a registered architect. Documents prepared and issued by the author before that date were issued as at their date and are unaffected.

The original presentation of some of the information and views submitted below was made to the 4th Annual Modular for Affordable Housing Conference in Sydney in April 2025. All opinions are those of the author. All referenced materials are cited in the references and appendices.

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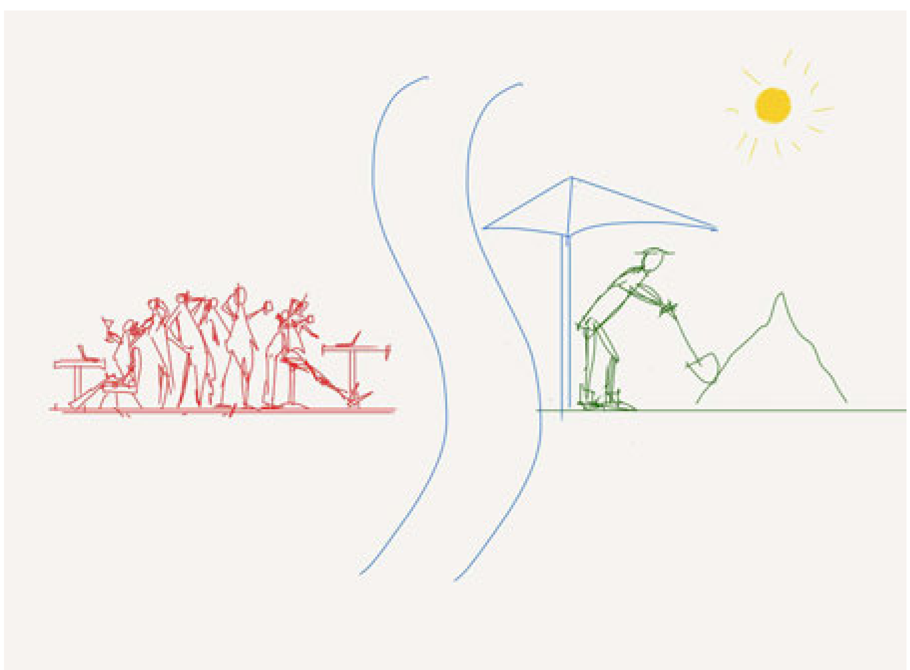

Figure 2 — The two mediums a small builder must work in at once, as drawn by the author: the world of the rule-makers and the world of the site. The submission that follows is an attempt to reconcile one to the other.

1. Introduction and standing

I make this submission as someone who has spent the last forty five odd years designing, prefabricating and constructing buildings, small and large, residential and commercial, in all sorts of materials and designs, in various states of Australia and overseas. The last twenty-five years have been dedicated to developing advanced manufactured flat packed, prefabricated, modular building systems, with roughly 250 factory-built pod dwellings delivered across Australia and overseas, many in challenging urban, off-grid and very remote locations. Alongside the building career sit formal architectural qualifications and Research Council of Australia funded postgraduate research study; I am comfortable with systems and mathematics, and after decades of business contracting and various legal cases, I understand contracts, statutory text and the perverse tendencies of the law and the courts systems. I currently lead project delivery and design at ReThink Prefab Pty Ltd.

I mention the combination of professional pathways not as any particular accomplishment but as evidence of my capacity to contribute to the research being undertaken by the Productivity Commission. The regulatory system this inquiry examines can only be navigated with any degree of success by someone fluent in two quite different mediums at once: the medium of the rule-makers — bureaucracy, text, process and precedent — and the medium of the builder — contracting, margins, cash flow, sites, materials, weather, gravity, subcontractors, trades, labourers, OHS and project sequencing. Most builders, including many of the best, hold one skillset: the physicality of constructing and managing people and logistics on sites. Most mum and dad owners and applicants for new home approvals hold none of these skills. A system that requires an unusual combination of capabilities merely to be navigated is a system calibrated to the wrong population, and the pages that follow are an attempt to firstly clearly identify the required pathways and then find ways to translate one world to the other while that remains necessary and to optimise the outcomes for all involved.

This submission responds to the interim report released on 27 July 2026. It supports all four of the Commission's draft best-practice principles and concentrates on two of them — "only regulate where necessary" and "keep the process simple" — from the standpoint of the small builder and the off-site manufacturer, who, if we are to address the current housing crisis — building crisis, even — must be addressed.

This document is arranged so that the argument can be read in full without the evidence cluttering up the text, and the evidence can be consulted in the appendices where it is wanted.

Section 2 states the whole of the case, with the figures that carry it, in about a dozen pages.

Section 3 sets out the recommendation we would like to present to the Productivity Commission.

Part Two sets out some answers to the Commission's information requests in the Commission's own numbering, noting each request and answering its points in order — information requests 1.2, 2.1 (twice), 2.3, 3.1, 3.2, 3.3, 3.4 and 5.1. Responses are numbered request-first, so that response 2.3.2, for example, answers the second dot point of information request 2.3.

Appendices A to I then set out the supporting evidence in full — the material cross-referenced to the text. Appendix J reproduces the detailed breakdown of the cost of building a house today, and Appendix K traces the four subjective refusal phrases discussed at response 3.1.2 to their origins.

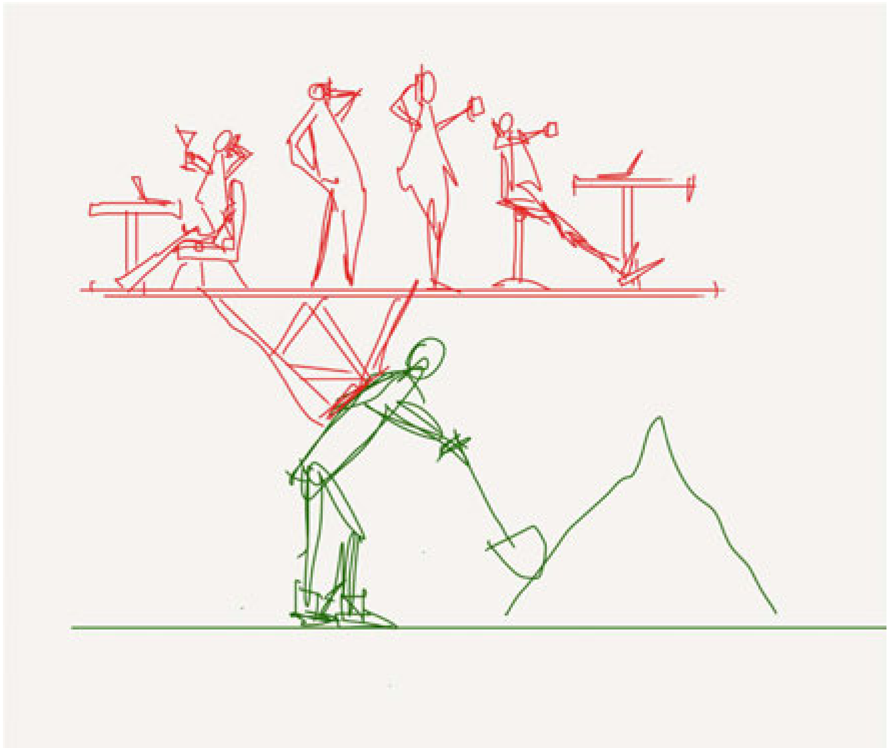

Figure 3 — most days this is what it feels like to the builder.

Planners, building surveyors, architects, engineers, arborists class 5, heritage consultants, bank valuers, banks, plumbing inspectors, traffic engineers, OH&S officers, WorkCare, LSL Levy officers, insurance assessors, clients, lawyers, trade account collectors, marketing sales agents, suppliers, trades accounts, union reps,

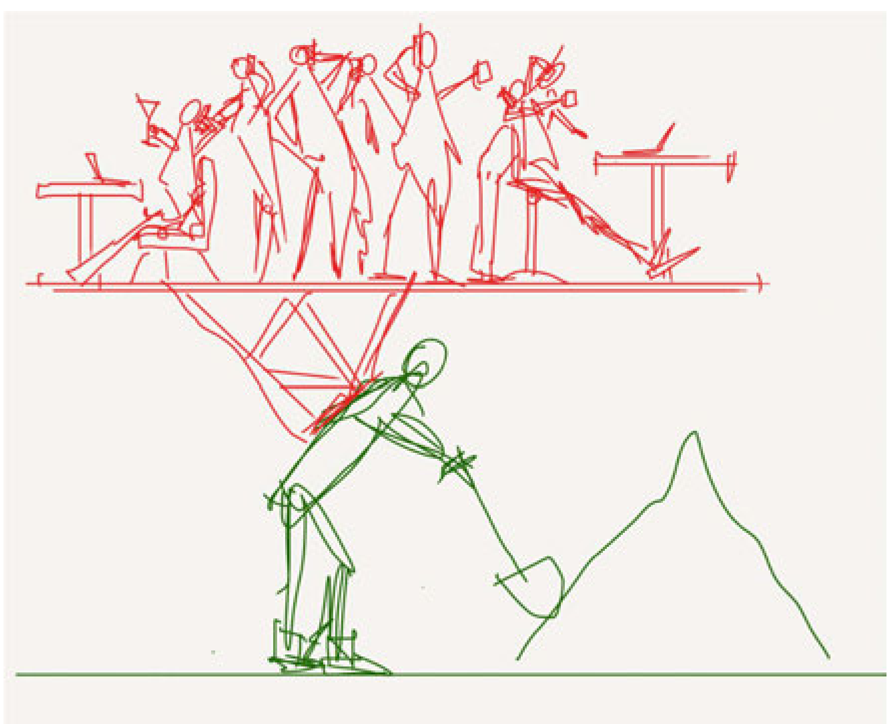

Figure 4 — And other days it feels like this.

Figure 5 — And sometimes like this.

2. The submission position in summary

2.1 The propositions simply put

Two propositions run through our submission regarding the bureaucratic environment enveloping building in Australia.

The first is that it is the cumulative burden that is the issue. No individual rule in all these systems is totally unreasonable. Almost every rule, regulation, bill, bylaw, accepted practice, common law principle, legal precedent or whatever it may be, was introduced for a defensible purpose, and most of them work – on their own. ***But nobody adds them up.*** There is no commercial or government body in Australia that assesses, prices or even catalogues the regulatory load on a single home build as the builder actually experiences it — across planning, building, consumer, safety, industrial, licensing, business and taxation instruments at once. At the time of writing at least five separate processes are examining parts of the same system concurrently, each with scope boundaries that exclude the others. A system reviewed only in pieces will be reformed only in pieces, and the builder is the only participant who experiences the whole of it at once. That is set out in Appendix A.

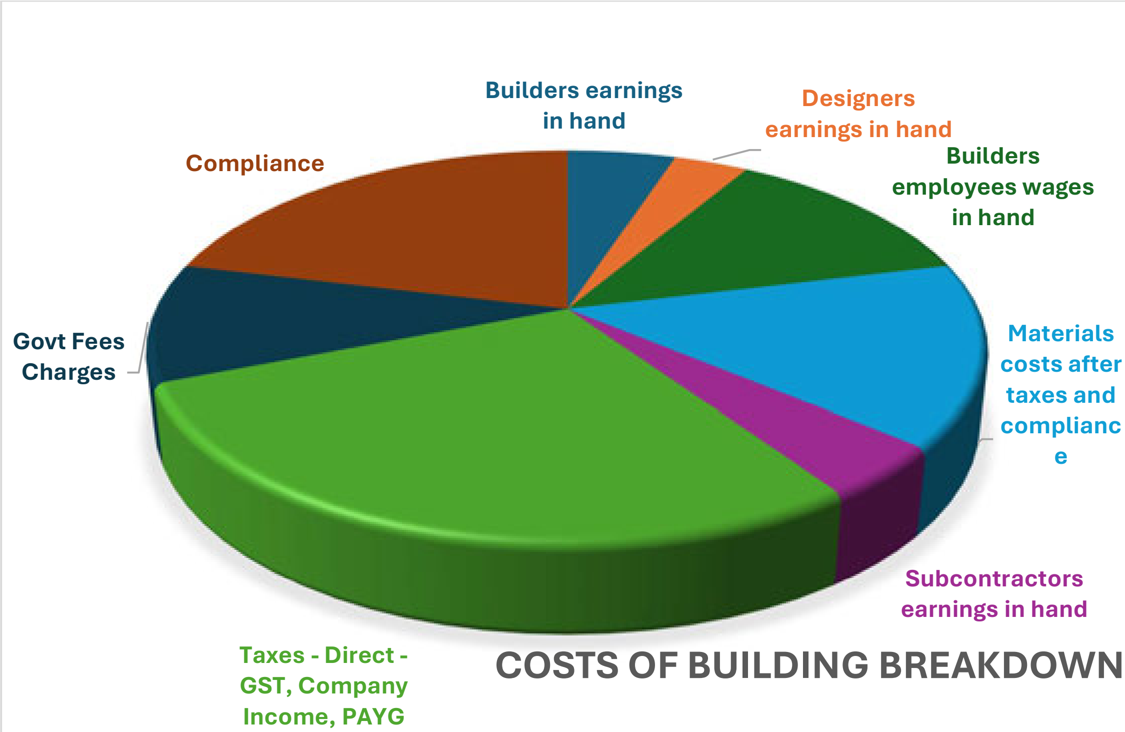

Figure 6 — our internal breakdown of single residential building project costs and the reason why construction productivity has stalled over the last few decades and building costs have increased in Australia over the same period despite new technologies making actual building faster

The second concerns a hidden assumption. Every residential development standard in New South Wales — every maximum height in metres, every floor space ratio, every minimum lot size — is a number. Where those numbers have come from and what decision parameters and assumptions used to generate them is not recorded, not tested, and not required to be justified by anyone at any stage. In the few cases where a council has published its working, the method was to measure what is already built and convert it into a legal ceiling. The assumption underneath is that what exists is the correct measure of what should be permitted. It is stated nowhere, argued nowhere and supported by no published derivation, modelling or stated method — and, as a method of planning, it ultimately prevents us going anywhere. It has operated since the County of Cumberland Planning Scheme brought land-use zoning to New South Wales in 1951. Appendices E, F and G set out the evidence in tedious depth.

Between them these elements produce the asymmetry that is this submission's central finding, and the only thing it asks the Commission to try to find some pathways to correct.

Take for instance a development application departing from a floor space ratio requirement by 10% must carry a written justification under clause 4.6 of the Standard Instrument Principal Local Environmental Plan, assessed by the consent authority and placed on a public register. A council setting that ratio need justify nothing: not at drafting, not at the Gateway determination, not on public exhibition, not at the Independent Planning Commission, not in any discussions with its residents and ratepayers. One party must justify every departure from a number. The other need never justify the number.

Nothing in this submission ascribes a motive to any council, councillor, officer or community. Each participant responds reasonably to the incentives in front of them. It is the asymmetry, and lack of rationality and scientifically verifiable processes in the rule setting, not anyone's conduct, that is what the Commission can correct. The scientific process has served our culture very well and taken us to amazing new places with technologies in vehicles, computers, AI and soon robotics... meanwhile housing slumbers on mired in a seemingly intractable NIMBY thought pattern.

2.2 A system no one sees whole

In 2024 I was asked, in a meeting with industry leaders, what is actually required to get a single house built in New South Wales. There was scepticism in the room that it was difficult to set all those things down in a single visually coherent rational way — that it was accepted that there was a reasonable set of fixed knowable hurdles for skilled professionals to clear. Figure 1 at the start of this submission above is the eye catching arresting answer, drawn in a single sitting: every Act, planning instrument, authority, consultant, certificate, insurance and payment control I could recollect from two decades of practice, arranged around the path a family must take from the decision to build to a finished home. Nothing in it is invented and nothing is duplicated, and a good deal is missing. When I began building in southern Tasmania in the late 1970s, development approval was a box to tick and the Building Code of Australia did not exist — it arrived in 1988. The accretion has been continuous ever since.

Figure 7 shows the same content formalised: five lanes — finance, legislation, authorities, consultants and builder obligations — around a process spine. Five approval gates; more than nineteen authorities and referral bodies; more than twenty-five instruments in simultaneous force; more than thirteen consultant disciplines; more than eleven certificates before occupation. The tidy version carries the uncomfortable implication. The burden can be systemised, which means it is a desk profession — coordination, document control and statutory interpretation. It now requires the equivalent of a full-time administrator per project. Yet around 98.7% of Australian construction businesses employ fewer than twenty people, most have two or three employees and many are sole practitioners, and those small builders construct roughly three quarters of the nation's dwellings. The administrator navigating the maze and the builder on the roof are usually the same person, doing the paperwork between concrete pours and late into the night.

The cumulative mountain of documentation is now pretty much beyond any one person's reach. Standards Australia maintains approximately 7,500 Australian Standards. The National Construction Code 2022 calls up more than 120 of those standards directly — the 2025 preview draft lists 176 — and on a stratified estimate anchored to eight verified page counts those directly referenced standards run to roughly 27,000 pages, about ten times the length of the Code that calls them up, before a single secondary reference is opened. No authority publishes a definitive list. Until this year every page sat behind a paywall: the lowest-cost compliant access is $1,202 per annum per business, and Master Builders Australia calculates the industry-wide cost above $131 million per annum. The Federal Budget 2026–27 has committed $42.7 million over four years to free read-only access — a welcome reform, arriving decades into the accumulation of these costs, for a set of rules society expects builders to follow — and a move that resolves the cost of reading the standards rather than the cost of applying them.

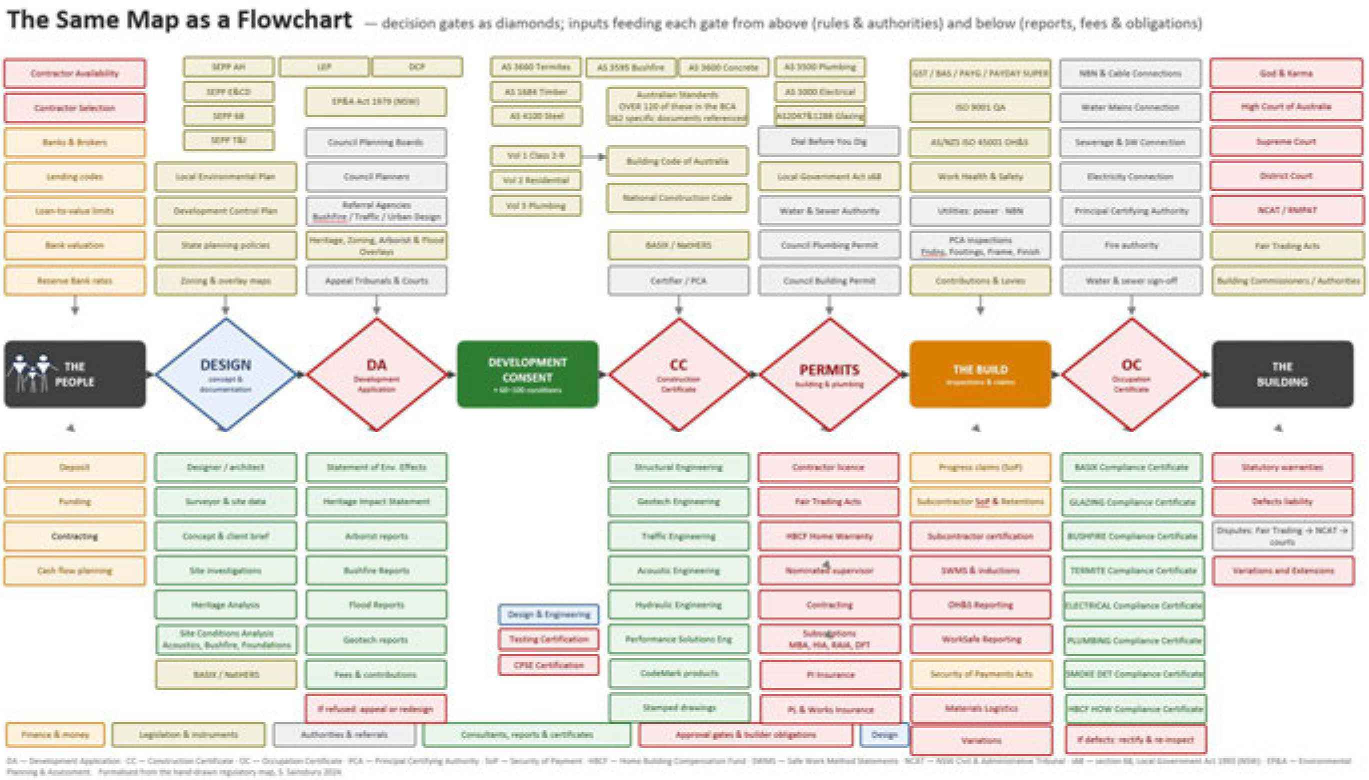

Figure 7 — The same content formalised into lanes. Five approval gates; 19+ authorities and referral bodies; 25+ instruments in simultaneous force; 13+ consultant disciplines; 11+ certificates before occupation.

In the planning layer, a 2024 survey counted more than 75,000 pages — close to 20 million words — across New South Wales councils' development control plans, the largest single plan running to 3,762 pages. The work health and safety layer on top of that is not one system but eight. The Housing Industry Association's small business survey of April 2026 found more than half of small builders spending at least five hours every week on regulatory tasks and nearly a third spending more than ten, with over half having hired or reassigned staff specifically to carry it. A burden nobody measures is a burden nobody is accountable for. The full account is at Appendix A.

2.3 The industry asked to carry it

There are two verified indicators that clearly describe what the bureaucratic load is doing.

In 2023–24 the construction industry recorded 2,975 companies entering external administration — 27% of all corporate failures in Australia, the largest share of any industry segment, in a year when failures overall rose 39%. In the same year the New South Wales Civil and Administrative Tribunal's Consumer and Commercial Division received 2,741 home building dispute applications and finalised 2,964. These are not measures of poor workmanship. They are measures of an industry operating without margin for error inside complex systems that supply error generously in a highly litigious environment where a court success can net complainants huge sums.

The dispute layer beneath those indicators is partially measurable, largely thanks to Victoria's Auditor-General: one in four residential builds involves a dispute between owner and builder; about 6.3% of permitted projects reach that state's mandatory conciliation gateway each year, an average of 5,780 cases against 92,158 domestic building permits (6.3%); and roughly 1.1 to 1.5% proceed to the tribunal. Queensland's regulator recorded 5,771 defective building work complaints and 1,223 directions to rectify in 2024–25. In fairness, the New South Wales tribunal numbers are falling — 2,870 applications in 2022–23, 2,741 in 2023–24 and 2,409 in 2024–25. What no government publishes is the aggregate: no national body counts building disputes across forums or jurisdictions, so the conflict this system generates is, like its page count and its safety hours, unmeasured by the bodies that administer it. The cost to the industry is vast and this has no cost to the rule setters or administrators. Contrarily it creates a thriving industry for consultants and bureaucrats. Appendix B carries the detail.

2.4 What the burden costs on one real project

From our own project records for small Class 1 buildings — cabins and modest pod dwellings — our best estimate is that some 63% of the total delivered cost is not the building. Design, consultant's reports, approval fees, development contributions, taxes, compliance certifications, licences, insurances and product and business certification account for the rest. The estimate is the author's own, derived by disaggregating project accounts across recent projects, and is offered on that basis. Figure 8 states it plainly.

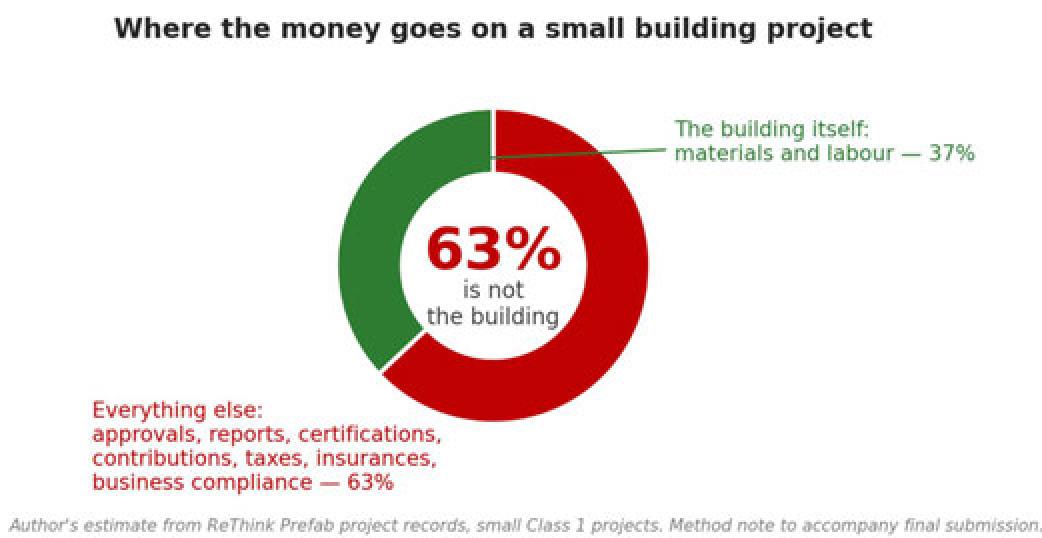

Figure 8 — Where the money goes on a small building project: the author's estimate that 63% of delivered cost is not the building (see section 4.1 and figure 10).

The case study at Appendix C.2 puts a real project against that arithmetic. A development application was lodged for two terrace-form dwellings — modest alterations and additions to an existing cottage, plus one additional dwelling on an adjoining vacant title — in an inner-Sydney heritage conservation area that state and local council strategic decisions had identified as optimal and appropriate for residential growth. It was notified to 570 different local residents – yes that is correct – Five hundred and Seventy separate invitations sent out by the council's delegated planner inviting objection to the proposal, each stating the acceptable grounds for objection. And that is specified as the required amount under the council's 'Notification Policy' which is not mentioned in any legislation, regulation or publicly reviewed decision-making process. In mid-2026 it was refused under section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (New South Wales) on twenty stated grounds. A substantial number of those grounds rest on qualitative judgments of the designated planner — "design excellence", "high-quality urban form", "sympathetic infill", compatibility with "desired future character" — standards an applicant cannot design to, because they are determined only after lodgement based on the opinion of the planner(s). One refusal ground asserted flood risk to life and property, notwithstanding that the planner did not refer the proposal to council's own flood management engineering department but chose to respond to the applicant's Certified Practicing Hydraulic Engineer's submitted detailed research report by simply ignoring it and also ignoring that the consent authority's own flood information certificate records the site outside the 1% annual exceedance probability event, in the lowest hydraulic hazard category in all events, with the proposed floor level above even the probable maximum flood level. That is a determination on a hydraulic question, made by a planning officer with no qualification in hydraulic engineering, and the cost thrown away by decisions of that kind is phenomenal and simply lands on the cost of the building. Because the site sits in a conservation area, notification ran to 28 days and 75 metres against the 14 days and 25 metres that would have applied to the same two dwellings outside it. Five objections were received, fewer than one per cent of those notified; the attributable ones came from the immediately adjoining neighbours. Three weeks before determination the authority wrote requiring withdrawal of the DA within seven days, failing which the application would be determined as lodged. No amended plans were invited and none were requested at any stage. After months of careful professional consideration, and dozens of detailed reports, council's planners denied any opportunity to negotiate or revise the designs, despite the pleas of the applicant. The application generated approximately twenty-five documents across twelve disciplines at lodgement, growing to the order of fifty through assessment and appeal, engaging more than a dozen professional disciplines and many tens of thousands of dollars — before a single trade attends the site. The pathway adds an estimated twelve months and a six-figure sum to a simple residential dwelling project, delivering extra houses in a high amenity area where they are recognised as desperately needed for the sake of the country.

That case is not an outlier so much as a draw from a very wide distribution. The New South Wales Government's council league tables for 2023–24 record the slowest council averaging 256 days per development application and the fastest 20 — a thirteen-fold spread within one state under identical legislation. In 2024 the Land and Environment Court of New South Wales registered 979 Class 1 environmental planning appeals; about 70% of the Class 1 matters finalised were development application appeals, and 58% of those were deemed-refusal appeals, commenced not because the consent authority said no but because it said nothing within the statutory period. The majority of development litigation in this state is manufactured by non-decision. On conservative figures — $50,000 for an appeal resolved early, $100,000 or well beyond if it runs toward hearing — the applicant side of the 2024 caseload alone represents in the order of $35 million to $100 million in one state in one year, with the consent authorities' defence costs of a similar order and the public funding of the Court on top. None of it is reported by any government as a cost of the system.

I have personally been preparing development applications for over forty years, they number in the hundreds, and I still cannot tell a client whether one will be approved or refused. I have had to actually write that into my design agreements as a clear and bold statement that an approval in the current system cannot be guaranteed, despite all efforts. Appendix C sets out the cost stack, the case study and the performance spread in full.

2.5 Prefabrication: the productivity gain opportunity blocked at the gate

The Commission's interim report documents, at box 3.2, a modular knock-down-rebuild approved only after thirteen months, partly because the council processed it as a standard build rather than under the pathway in section 68 of the Local Government Act 1993 (New South Wales) — a pathway designed for manufactured home parks and caravan parks rather than permanent homes. Across some 250 factory-built pod dwellings over twenty-five years, our experience is that this case is representative rather than exceptional.

Three frictions recur over and over:

i. Classification: the approval pathway under section 68 of the Local Government Act 1993 (New South Wales) is routinely misapplied for permanent prefabricated dwellings on private land and at the same time refused for prefabricated building systems.

ii. Sequencing: certification frameworks assume an inspector can view open frames and services on site at mandated stages, and a finished module arriving on a truck defeats that assumption — to which the system's response is duplication, two approval and certification sets, rather than adaptation.

iii. Finance: bank progress payments release funds at slab, frame, lockup and completion, and a dwelling 80% complete in a factory fits none of those gates, so the most productive construction method in the industry is also the hardest to finance.

The remedy is a product layer protection that does not yet exist.

Under the Road Vehicle Standards Act 2018 (Commonwealth) a vehicle model is type-approved once, nationally; individual vehicles are then bought, delivered, registered and driven without each driveaway requiring a fresh engineering assessment. A factory-built dwelling should work the same way: the model assessed once against the National Construction Code and the relevant Australian Standards — and product conformity the responsibility of the manufacturer and testing agencies. The Australian Building Codes Board's national voluntary certification scheme for manufacturers of modern methods of construction is the natural seed. This would require every state planning system recognising the pre-approved model as deemed-to-comply, collapsing the per-site question to what is genuinely site-specific: siting, footings and service connections.

This is not a speculative proposal; it simply takes from pre-existing, appropriate models used in other fields that are achieving impressive productivity gains, particularly over the last couple of decades of advanced automation in production. Shipbuilding and aircraft manufacture have followed suit. Construction can follow the same path: a standard model, used repeatedly, for different housing projects.

Some of our current models for substantial houses are flat-pack into standard shipping containers, shipped to hyper remote sites, assembled by a small crew on site with hand tools on disturbance-free footings in ten days or less, are cyclone-rated and bushfire resistant, are fully demountable and reusable at end of life, and carry built-in sensor suites for smoke, air quality, carbon dioxide, temperature, humidity and moisture — which allows performance to be monitored continuously for the life of the dwelling rather than assured by multiplying inspections. Figures 9 & 10 below show delivered examples. Appendix D and response 2.1.3 carry the detail.

Figure 9 — A ReThink Prefab pod dwelling on the lawns at Old Parliament House, Canberra. Flat-packed into standard shipping containers, assembled by a small crew with hand tools on disturbance-free footings. Author's project; the interest is declared.

Figure 10 — The same building system delivered to a remote coastal site. Approximately 250 such dwellings have been delivered across Australia and overseas over twenty-five years, many in off-grid and very remote locations. Author's project; the interest is declared.

2.6 The untested assumption — the core argument

I will say with some confidence that regulation is at least 'a', if not 'the', binding constraint on the supply response to the erupting housing crisis. No change to interest rates, construction techniques, capital gains tax, negative gearing or migration will cause a four-storey terrace to be built where that terrace is prohibited. Test it anywhere. Planning, zoning and heritage rules are iron-clad in our cities, our towns and even the countryside. Beneath the prohibition sits an assumption that what is there now sets what should be allowed there in our future — and that assumption is not tested, not verified, and not required to be either.

I'm going to go out on a limb and say that if we are to become the future culture we want to be, with contemporary technologically advanced, environmentally responsible and responsive dwelling systems then the way we treat housing construction politically and socially needs to have a good hard look at itself.

Throughout the extensive research we have been undertaking, we could not locate any Australian planning instrument that has ever been evaluated after the fact against its own stated objectives. Not a local environmental plan, not a development control plan, not a heritage conservation area value assessment, after three or four decades of operation. Planning may be the largest body of Australian regulation with no evaluation requirement, no post-implementation review and no outcome measurement of any kind — and, in my view, without any rational scientific underpinning. The methods exist and are well established; they have simply never been applied here.

Figure 11 — a brief list of the applicable and untested planning regulatory envelope – just for NSW

Worse than unevaluated, the instruments are structurally exempted from evaluation — an exemption difficult to reconcile with confidence in the assumptions underneath. State environmental planning policies and local environmental plans are not "statutory rules" within the meaning of section 3 of the Subordinate Legislation Act 1989 (New South Wales), so the regulatory impact statement duty in section 5 of that Act never attaches to them. They do not sunset, and they are not disallowable by either House. Victoria has been blunter in protecting these politically sensitive controls: planning schemes, scheme amendments and the Victoria Planning Provisions are named as exclusions in the definition of "legislative instrument" in section 3(1) of the Subordinate Legislation Act 1994 (Victoria) — written out by the Subordinate Legislation Amendment Act 2010 (Victoria), at the very moment Victoria widened the net to catch more instruments. And one piece of drafting settles whether this is accident or design. Schedule 4 of the New South Wales Act lists excluded instruments; item 22 — inserted after the 1989 Act was made — excludes ordinances under Part 12A of the Local Government Act 1919 (New South

Wales), the old planning scheme ordinances. Those were ordinances, so they would otherwise have been caught; the exclusion was written in by name. The Environmental Planning and Assessment Regulation 2021 (New South Wales), which prescribes forms, fees and procedural steps, received a full published regulatory impact statement with options analysis, costings and a net-benefit test, because it is a statutory rule. The State Environmental Planning Policy (Housing) 2021 (New South Wales), which decides what may lawfully be built on residential land across the State, received none.

DA processes have become multi staged nightmares ….

- **Pre-Lodgement:** Preparation phase meeting with council officers to discuss project. For understanding the requirements and flag potential roadblocks.
- **Lodgement:** Application formally submitted to the council with plans and documentation.
- **Assessment:** The council reviews your DA to ensure it meets zoning, environmental, heritage, bushfire, and planning controls.
- **Revisions:** Planners advise of revisions & extra reports for re-assessment
- **Determination:** Council either approves (with Conditions) or refuses the application — in the case study at section 4.2, with meeting assessment timeframes recorded as an express consideration in recommending refusal.
- **Appeal — section 8.2 and 8.3 internal review: becoming a commonplace point at which to review a council planner's decision when things do not go the applicant's way. Outside the planners' key performance indicators and the league table, but still within the council's planning control.**
- **Appeal — section 8.7, leading to a section 34 conciliation conference: the new resolution point for more challenging proposals. Applications refused outright are taken to section 34 conferences, where negotiation occurs and alternative schemes can be proposed without affecting key performance indicators or league tables — at the risk of the council's internal workings being exposed publicly and critiqued by judges and commissioners.**
- **Consent conditions currently run to 60–100 points that need to be dealt with: some prior to building, some during building, some after completion.** Many of these are outside the DCP and LEP controls.
- **Post-Approval:** If approved, a Construction Certificate is required from a Building Surveyor with requisite certifications and extensive documentation.
- **Building Permit:** most councils require a submission with DA, CC & plumbing permit to issue a Building Permit to proceed with actual construction

Where the equivalent question has been tested overseas, it has been answered. Auckland's 2016 upzoning of roughly three quarters of its residential land — a case study the Commission itself carries at box 1.3 of the interim report — produced 21,808 additional dwellings consented in five years on the estimate of Greenaway-McGrevy and Phillips (Journal of Urban Economics, 2023), a 4.11% increase in the available housing stock, using a method that bounds displacement rather than assuming it away. A separate synthetic-control study reached the same conclusion by a different route: 46.5% of permits attributable to the reform, up 86.8% over seven years, and rents six years on 26% to 33% below the synthetic control. Two independent identification strategies agreeing is as strong as this class of evidence gets. A São Paulo regression-discontinuity study explains the politics without ascribing a motive to anyone: incumbent homeowner losses from upzoning exceed consumer welfare gains roughly sixteen-fold. Those who bear the cost of change are concentrated and present; those who would gain are dispersed and absent. Appendix E sets this data out in full.

2.7 Control by ratio: where the floor space ratio came from

This submission sets out the floor space ratio record and shows that it is not what the debate assumes. The ratio entered New South Wales law in 1957 as an explicit anti-yield device. The Height of Buildings (Amendment) Act 1957 (New South Wales), Act No 12 of 1957, assented 8 April 1957, made the existing 150-foot ceiling discretionary and required conditions "specifying the ratio which the total floor space of the building shall bear to the area of the site … to the intent that the number of persons to be accommodated shall not exceed the number which would have been accommodated had the building been erected in all parts to a height of one hundred and fifty feet." That is a floor space ratio in substance, and it precedes New York City's adoption of Floor Area Ratio by four years. Its stated purpose, written into the section, was compensatory: the relaxation was not to produce additional accommodation. There is no record anywhere of why the random figure of 150' was chosen. The finding is verified against two independent primary sources. The ratio then entered Sydney's local practice in 1971 through a non-statutory Council code adopted, on the City of Sydney's own account, as a "policy response" to a 1960s approval boom, which "gave the City of Sydney a degree of control over the supply of floor space". Why they wanted that is not stated — it is just assumed it was needed … without any scientific research as to why and what they were doing with the control… apart from the Machiavellian perceived benefits of control itself.

The Department's own design guidance contradicts its own statutory architecture. Part 2 of the Apartment Design Guide, made under State Environmental Planning Policy No 65, states that primary controls together "create a building envelope"; that "FSR is not a measure of the maximum capacity of the building envelope"; that gross floor area "should only 'fill' approximately 70% of the building envelope"; and that "building envelopes should be tested prior to setting FSR controls". On that methodology, the envelope is the primary object of design and the ratio is a figure derived from it. The statutory architecture does the opposite: it gives binding, appealable force to the derived figure and leaves the envelope in a non-statutory development control plan. The only departmental document addressing the purpose of the control directly is Practice Note PN 08-001, issued 30 January 2008 and not amended in the eighteen years since. And there is no State-level statement of what the ratio is for: clause 4.4(1)(a) of the Standard Instrument — Principal Local Environmental Plan reads, in full, "[set out objectives of the clause]".

The consequences are visible in individual files publicly available. For example; at 240–242 Pennant Hills Road, Thornleigh, a proposal of maximum height 5.46 metres against a permitted 10.5 metres — 48% of the permitted height — nonetheless required a clause 4.6 request and panel determination because its floor space ratio was 0.62:1 against 0.5:1; the Council's own assessment recorded that "an increase in FSR would not generate additional infrastructure demand and does not amount to an overdevelopment of the site." In the City of Newcastle's variations register for the first quarter of 2025, an application at 54 Greaves Street, Mayfield East required a full written clause 4.6 request for a variation of 0.12%. Internationally comparable cities differ in which control comes first: Paris and Vienna regulate mid-rise residential form by envelope with no floor area ratio at all; Germany's ratio is advisory in most contexts; Barcelona pairs a ratio with a statutory height-to-street-width table; Japan, China and New York City put the ratio first — Japan alongside a non-discretionary approval pathway with a thirty-five day statutory determination period. New South Wales does not publish variation data in a form that would allow any of this to be tested at scale. Appendix F carries the full record, including what it does not establish.

2.8 How the density number is actually set

The State instrument contains no number. Clause 4.3 of the Standard Instrument provides that height is "not to exceed" the maximum shown on a map, and clause 4.4 that floor space ratio is not to exceed that shown on a map. How the 'map' numbers are determined or designated is not described. The term "low density" is not defined numerically anywhere in the instrument. The instrument creates a mandatory slot and supplies no value and no method for filling it: every residential density number in New South Wales is a value entered on a council map. And ultimately no rationale is recorded for the need for these controlling numbers, nor any measure of their effectiveness, nor of the direction their application has set for the cultural wellbeing of our society. What is emerging, clearly and obviously, is the danger of insufficient housing supply in Australia — a danger to which the application of these numbers directly contributes.

Where a council has published its workings, the rationale is to measure what exists. Northern Beaches Council planning proposal PP-2024-1343 set its low-density floor space ratios by analysing 2,177 properties drawn from development applications lodged between 2011 and 2022 and adopting the 70th percentile — 0.55:1 under 500 square metres, 0.5:1 for 500–699, 0.45:1 for 700–899. The input is the record of what has already been approved, by planners; the output is a legal ceiling. The only recorded validation of the near-ubiquitous 8.5 metre height standard is a third-party observation that the Housing Code had "undergone extensive testing on pre-existing housing stock". Not testing of what building systems can safely, and with amenity, deliver — just of what has been built over the last few decades in our suburbs. Rome's dense central districts, by contrast, have carried five- and six-storey housing since antiquity. Development control plans state existing character and then restate it as policy: Botany Bay Development Control Plan 2013 describes the Pagewood precinct as "one and two storey detached dwelling houses" and, on the following page, sets the desired future character as to "Retain … one and two storey detached dwelling houses". The Inner West Development Control Plan calculates front and rear setbacks by "averaging the front and rear setbacks of the adjoining main buildings on either side" — an envelope that cannot generate a value not already present next door. North Sydney Development Control Plan 2013 records that its character statements "have been derived from the Area Character Study that was originally undertaken by Council in 1998"; they govern built form in 2026. Character description is recycled as character prescription — the untested assumption doing its work in plain sight.

Nothing in the system tests it, and when challenged the Courts have said the reasoning must run the other way. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, Preston CJ held at [92] that desired future character *"establishes the building heights … and not the other way around",* at [95] that it *"exists before and informs the establishment of the maximum height and FSR for buildings",* and at [98]–[99] identified the circularity the contrary construction would produce. No institution in the plan-making chain is charged with checking which direction it went. Neither merit test in the Local Environmental Plan Making Guideline requires a height or floor space ratio figure to be justified by evidence; site-specific merit expressly directs the assessor to *"existing uses, approved uses, and likely future uses of land in the vicinity",* and infrastructure enters only as a servicing check on a number already chosen. The term against which the number is finally tested — *"character"* — is not defined in any New South Wales heritage act, local environmental plan or development control plan. And the aggregate result has been measured by the State itself: across medium-density lots in the Six Cities Region the average maximum height control is around 9.9 metres and the average floor space ratio 0.73:1; around 77% of residential areas are zoned low density; 94% of Greater Sydney councils prohibit multi-dwelling housing in those zones; only two of thirty-three permit terraces and townhouses. The State's response was not to require councils to justify their numbers but to override them with non-refusal standards.

The household evidence cuts in more than one direction and Appendix G presents both sides at equal length. Against the controls: at the 2021 Census 3,529,166 separate houses — 52.6% of them — housed one or two people; 44.3% of households had two or more spare bedrooms; and multiple-family households, the only household type where 'crowding' by purely Australian perceptions dominates, needed an additional bedroom at 23.1%, six times the national rate. For the controls: Australian stated-preference research has consistently recorded a strong preference for detached housing, from 67 to 95% across studies from 1973 to 2004, and the Australian Housing Aspirations Survey 2018 found satisfaction with houses at 67 to 86% against 37 to 47% for apartments. That evidence is real and is not disputed here. The narrower claim the evidence does support is about choice at prevailing prices: when the Grattan Institute put real dwellings at real prices to 572 households in *The Housing We'd Choose* (2011), detached houses were 62% of the Sydney stock against 41% chosen, semi-detached 12% against 25%, and apartments of four or more storeys 10% against 20%. The preference is real, and it is rationed by price. Appendix G also records, expressly, that nothing in it supports any conclusion about the motives of councils, councillors, officers or communities.

2.9 Heritage: the same untested assumption, at scale

This submission does not propose that heritage protection be removed, and nothing here is an attack on the appropriate conservation of our very limited heritage building stock in this country. It is, however, a strong call for rationalisation of the heritage estate and of the processes that define it. We have entire suburbs, particularly in highly desirable, inner urban areas of the country where residential accommodation is desperately needed for those who service and run our cities, now blanket listed as Heritage Conservation Areas and locked up from denser development — despite the low heritage value and low residential amenity of many of the properties within them.

The Heritage proposition put here is narrower and is about process. Approximately 25% of residential land within ten kilometres of the Sydney central business district and our other urban centres also, is heritage-protected, about 20% of that is blanket covered as heritage conservation area rather than individual listings of specific buildings; in North Sydney, Newtown, Edgecliff and Redfern the figure runs between 50 and 85%. In Hobart some 95% of the council area is heritage conservation designated. No cost-benefit analysis or regulatory impact assessment is required at any point or undertaken before a heritage conservation area is created, in any state or council. A systematic review published in the journal *Heritage* in 2023 found that "character" is not defined as a term in the heritage acts or the planning instruments that rely on it, and that no official publication of the New South Wales heritage authorities defines the purpose of a heritage conservation area at all.

There is no legislated requisite qualification or experience guidelines or formal licensing or registration for a heritage consultant or council heritage officer, anywhere in Australia — while the architect whose design that a heritage consultant's assessment overrides must train for years, have multiple graduate degrees, sit professional exams, undertake annual continuing professional development programs, hold extensive professional liability insurance and be annually registered under the Architects Act 2003 (New South Wales) and the builders working on these buildings require licensing, insurances, warranty eligibility and extensive annual continuing professional development. Heritage officers and consultants are not required to hold Professional Indemnity Insurance, as they aren't considered professionals as they have little or no technical qualifications, that is despite their massive influence on what gets built and where, in our cities, towns and countryside.

The State has already drawn a distinction it has not explained. Section 164(1) of the State Environmental Planning Policy (Housing) 2021 (New South Wales) lists what is carved out of the low and mid rise housing provisions — bush fire prone land, specified coastal and flood land, four named local government areas, and at paragraph (d) *"land that is a heritage item or on which a heritage item is located".* Heritage conservation areas are not on that list. Two chapters later, section 182(1) repeats the same categories for the pattern book chapter and adds, at paragraph (d), *"land that is identified in an environmental planning instrument as being in a heritage conservation area".* The two terms are separately defined in the policy's own dictionary, so the section 164 exclusion cannot be read as picking up conservation areas. The same instrument, drafted on the same template, excludes them from one chapter and not the other, and neither the policy nor its explanation of intended effect nor any published departmental material records a reason. Whichever treatment is correct, one of them was chosen without a stated derivation. That is the proposition this submission advances. Our society needs to review the underlying notion and assumptions of the heritage industry in this country and get it onto a professional, rational and clear basis that protects what is worthwhile and valuable to our culture and (carefully) releases these highly valuable residential areas for appropriate densification into the 22nd century AD before the flying cars, robots, AI, AR, The Line and full immersion in the global internet leave us all looking like dinosaurs.

The question which goes unasked is what the value of heritage is, and to whom it has that value. Is it a measurable real value, or a perceived value — and perceived by whom? Have any cost–benefit studies been done to confirm the perceptions on which the regulations rest? These are real questions, not intended as antagonism towards a belief structure. We are developing advanced algorithmic tools and artificial intelligence systems capable of measuring things that have seemed immeasurable in past eras — or at least too politically fraught to set dimensions to — and they can be directly applied to this question, with potentially significant value to our society.

Where the effect of heritage designation regulation has been measured, the findings are uncomfortable for the heritage value propositions. The largest English study, covering 1,088,446 transactions across all conservation areas, found a substantial price premium inside them but "no statistically significant designation effect" — the premium is the architecture and the location, not the regulation. In New York, historic districts reduce the share of lots seeing new construction by around three percentage points and hold approximately 119 million square feet of permitted but unused residential floor area, equivalent to some 119,000 dwellings. On the other side, the best-identified estimate of heritage benefits, from the Netherlands, finds benefit-cost ratios between 1.14 and 4.28 — although it values heritage investment rather than heritage regulation, and is therefore not authority that designating a suburb passes a cost-benefit test. This Commission found the Australian regime "often ineffective, inefficient and unfair" in 2006, recorded that "typically, there is little, if any, consideration of the costs imposed either, on the owner or the community more generally", and recommended a hardship pathway and negotiated conservation agreements. The core recommendations were not adopted. Twenty years on, the interim report of the present inquiry reaches the same finding in the same words. Appendix H and response 2.3 carry this in full.

2.10 The construction codes

The other side of the regulatory burden that has dramatically increased over the last few decades is the construction codes system. This has finally been recognised and acted on by the Commonwealth, with a pause on residential changes to the National Construction Code — the successor to the Building Code of Australia — after years of near-continuous amendment, revision and restructuring, told below.

The first house I built for myself, back in the mid-1980s, I was able to go to the library and consult the relevant timber construction code, talk to some builder mates, and do my own drawings for a house for my young family on a block of land we could just afford to buy. The council's building inspector and plumbing inspector came along at the start and gave me good advice on what I needed to do, which I followed, and I worked my way through with the inspectors' directions and guidance to a place of our own, that we could move into and afford to live in. And that was during the insane credit squeeze we had to have, when our mortgage costs began at 13.5% and then climbed sharply and eventually hit 18.5% by the end of the decade. But still we, and many others, built homes, as we needed to, to have somewhere to live and be sheltered by. I don't think that would be possible today.

I would question the received wisdom that interest rates determine building rates, they certainly have their effect - but in my view, it is more a matter of the confidence and/or needs of those wanting to build. The withholding force for people wanting to build is fear of loss, not fear of risk. If people looking to build are confident they will be able to do it; get approval, construct something for the budget they have, and come out with a better outcome for their lives, with any potential for loss minimal or mitigated — then they will proceed, despite the cost. There is an acknowledged persistent regulatory barrier to building in this country.

The Building Code of Australia did not appear from nowhere in 1988; it was the endpoint of a long march out of the by-law era. Into the 1980s, building regulation was substantially a local affair: each state ran its own building Act or ordinances, and beneath them many councils administered their own building codes. In my early working years in Tasmania, most councils worked from rules descended from English county and municipal by-laws of one form or another, complete with prohibitions imported from turn-of-the-century Britain — chain downpipes, for one, banned on the strength of what was being done in England decades earlier rather than anything observed here. The path to a single code ran through the Interstate Standing Committee on Uniform Building Regulations, formed in 1965; its Australian Model Uniform Building Code of the mid-1970s; and the Australian Uniform Building Regulations Co-ordinating

Council, established at ministerial level in 1980, which published the first Building Code of Australia in 1988 — drawing on the research base built since 1944 by the Commonwealth Experimental Building Station, which was absorbed into the Commonwealth Scientific and Industrial Research Organisation in that same year and is credited with a key role in the code's development.

No-one would complain that the codes are unnecessary or that they don't produce good buildings. Australian houses are amongst the best in the world — safe, accessible, energy-efficient and suited to our climates. But the rulebook that delivers them has become huge, costly, and always moving.

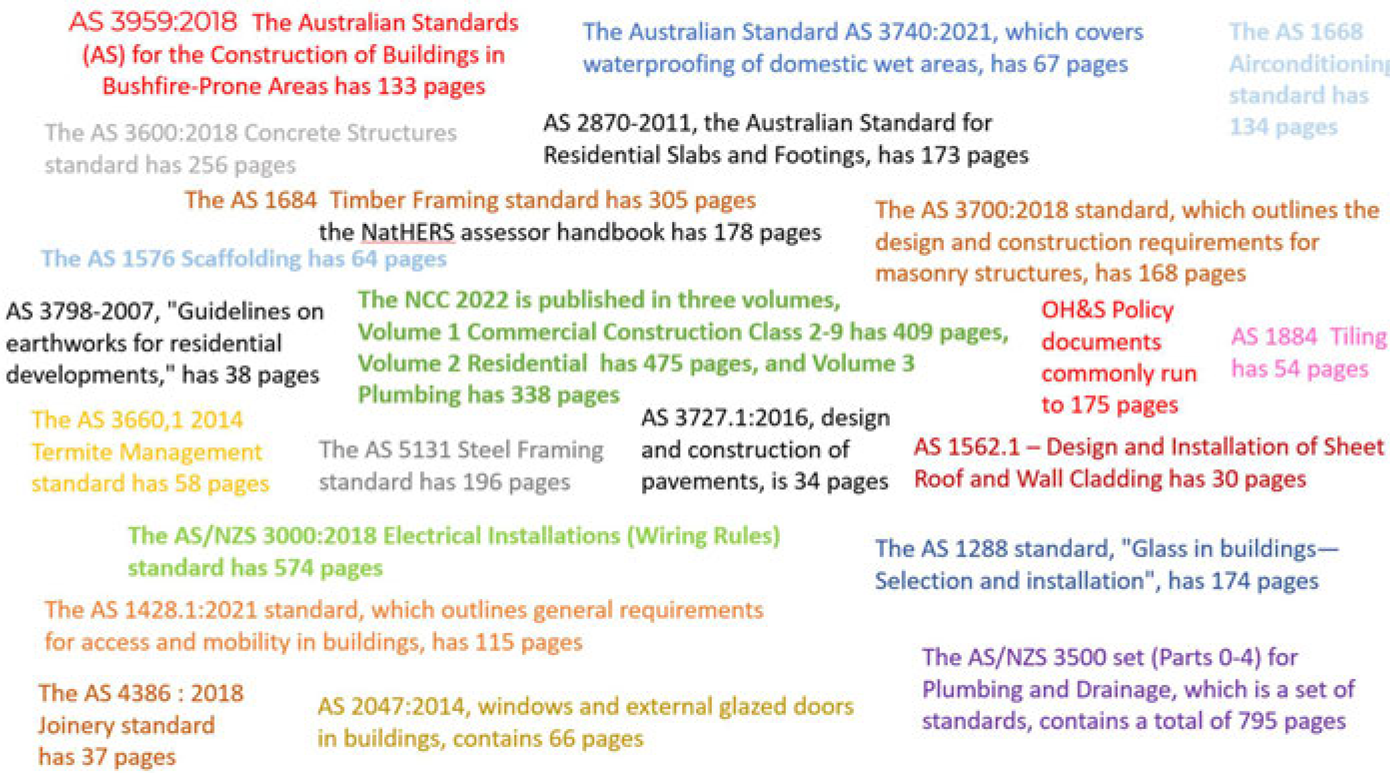

Figure 12 — a splash page of some of the applicable construction regulatory envelope

And a significant part of the cost of complying with the codes is the continual movement of those very codes themselves. From that first 1988 publication, the code was recast in performance-based form in 1996, and from 2003 a new edition was adopted every year, on 1 May. In 2011 it was consolidated with the national plumbing code as the National Construction Code, maintained by the Australian Building Codes Board — a standing body of the Commonwealth, state and territory governments, not a private owner — and the code itself has been free to read online since February 2015.

Though to extract the referenced Australian Standards and their passages for documentation and referencing or citing it still requires substantial annual subscription. Even though compliance with those standards and citing of them is a legal requirement, which seems fundamentally wrong in principle. Ignorance of the law is no excuse, granted; but if you have to pay to remove yourself from that ignorance then that might violate a fundamental human right, but let's leave that to the international lawyers for now given Australia doesn't have a bill of rights at present.

Annual NCC editions continued to 2016, when the cycle moved to three years for major reworking of the codes: 2019, 2022, 2025. The 2022 edition restructured and renumbered the entire code — clause C1.1 became C2D2 — so that decades of accumulated professional memory of clause numbers and documentation cited references was written off overnight, and its residential provisions added seven-star energy efficiency and livable housing requirements: each worthwhile on its own terms, each carrying a re-learning cost across every builder, designer, certifier and trade in the country. The direct dollar cost, meanwhile, sits less in the free code than in the paywalled Australian Standards layer it calls up, priced at section 2.3 above.

The NCC is to be amended in 2025 in a complete revision following the 2022 debacle

The NCC as pretty much completely changed in 2022 was made binding in 2023

The NCC was amended in 2022 to bring in the ABCB Housing Provisions

The NCC was amended in 2022 reinstating Wet Area Detailing requirements

The NCC was amended in 2019 twice

The NCC was amended in 2016 - twice

The NCC was amended in 2015

The NCC was amended in 2014

The NCC was amended in 2013

The NCC was amended in 2012 and Wet Areas details removed to AS 3740

The National Construction Code NCC was first issued in 2011 incorporating the Plumbing Code

The BCA was amended in 2010

The BCA was amended in 2009

The BCA was amended in 2008

The BCA was amended in 2007

The BCA was amended in 2006

The BCA was amended in 2005

The BCA was amended in 2004

The BCA was amended in 1996 – 14 times including the new Volume 2 Residential

The BCA was amended in 1990 – 11 times

The Building Code of Australia BCA was first issued in 1988

Figure 13 — Every amendment and update and revision means increased risk and days of work for each and every builder in the country – which is never accounted for or costed. Each regulation update is work and fees for the rule makers.

And architects and builders have to know all those codes to practise their professions.

- Environmental Planning and Assessment Act 1979 and numerous revisions and amendments and associated Acts and Regulations
- Building and Construction Industry Long Service Payments Act 1986
- NSW Fair trading Act 1987   Over 2500 applications - 80% resolved by Fair trading 20% to NCAT
- NSW Home Building Act 1989 and Part 6 - Home Building Regulations 2014.
- Home Building Compensation Fund HOME BUILDING ACT 1989 - SECT 99
- NSW Civil and Administrative Tribunal (NCAT) *[2023-24 - 2741 applications 2964 cases resolved]*
- Building Legislation Amendment Bill 2023 - amendments to the Home Building Act
- Design and Building Practitioners Act 2020 (NSW) (DBPA)
- The Competition & Consumer Act 2010 - Australian Consumer Legislation ACL (TPA)
- Strata Schemes Management Act 2015 (NSW) 'Strata Building Bond and Inspection Scheme'
- National Construction Code NCC
- Building Code of Australia BCA Volume #2
- Australian Standards AS XXXX – so many they cannot all be named
- Work Health and Safety Act 2011 No 10 - CODE OF PRACTICE - CONSTRUCTION WORK 2019

Figure 14 — More of the construction regulations that need to be known and considered daily by builders

Building Legislation Amendment Act 2023 – 45 pages
Development Certification and Fire Safety Regulation (Environmental Planning and Assessment Regulation 2021) – 14 pages
The Design and Building Practitioners Act 2020 – 28 pages
Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 – 13 pages
Building and Development Certifiers Act 2018 (NSW) – 20 pages
The NSW Strata Building Bond and Inspections Scheme (SBBIS) 2018 – 48 pages
The NSW Building Products (Safety) Act 2017 – 50 pages
Building and Construction Industry (Improving Productivity) Act 2016 – 38 pages
Strata Schemes Development Act 2015 (NSW) – 142 pages
Strata Schemes Management Act 2015 – 273pages
Home Building Amendment Act 2014 – 50 pages
Civil and Administrative Tribunal Act 2013 – 37 pages
Plumbing and Drainage Act 2011 – 34 pages
Residential Tenancies Act 2010 (NSW) – 143 pages
Competition and Consumer Act 2010 – 250 pages Incorporating the ACL
Building Professionals Act 2005 – 76 pages
Architects Act 2003 -17 pages
Building and Construction Industry Security of Payment Act NSW 1999 amended 2001 &2018 – 13 pages
Home Building Act 1989 (NSW) – 100 pages & Regulations 2014 – 37 pages
The Fair Trading Act 1987 - NSW Fair Trading, - 108 pages & Regulations 2019 – 14 pages
Environmental Planning and Assessment Act 1979 (EP&A Act) – 327 pages
The Housing Improvement Act 1936 (NSW) – still current

Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

Civil Procedure Act 2005 20 pages

Work Health and Safety Act 2011 – 177 pages And 2018, 2022, 2023, 2024 amended acts

Community Land Management Act 2021

Fair Work Act 2009 & 2015 2017, 2020, 2021, 2022, 2023, 2024 amendment

Gas & Electricity Act (Consumer Safety) 2017

Property and Stock Agents Act 2002

Building Bill 2024 NSW TBA – 113 pages ???

Figure 15 — and More of the construction regulations that need to be known and considered daily by builders

In August 2025 the Commonwealth conceded the point at least with regard to the BCA Volume Two Housing Code for Class 1 buildings. The Ministers for Housing and for the Environment announced on 23 August 2025 that once the 2025 edition was finalised, further residential changes to the National Construction Code would be paused until mid-2029 — the end of the National Housing Accord period — excepting only essential safety and quality measures, though that is left entirely open ended and will allow very significant changes to happen, but we shall have to see how that pans out. The codes setting bureaucracy and its industry is still there – beavering away, all employed and producing amendments… Australian state and territory building ministers endorsed the Volume Two pause on 22 October 2025. The same announcement committed to removing code barriers to modern methods of construction, including prefabrication — precisely the friction described at section 2.5 — and to considering a permanently longer amendment cycle. Though of course to allow prefabricated buildings their own regulations will mean a major amendment to Volume Two. It won't be removing anything in my opinion and experience. It will be adding a vast new whole section to the code. Another few hundred pages with thousands of standards pages specifically referenced and likely some whole new standards developed. The codes industry will have work.

A major point of all this is not that the construction code is too big, although it is. That has been recognised and there is a start to addressing this. It is what the case shows by contrast. The construction code is written by a public intergovernmental body, exposed to public comment and regulatory impact analysis before each amendment, free to read — and when its cumulative burden was judged too great, it was measured, debated and paused. Nothing on the planning side of the ledger has ever received that treatment. No New South Wales planning instrument is subject to a regulatory impact statement (section 2.6); no development standard carries a published derivation (section 2.8); and beneath the instruments sits a further layer that is not regulation at all — the assessment practices, internal checklists, precedents and departmental habits of council planning offices, which determine much of what an application must contain and how it will be judged, yet are written in no instrument, made by no parliament, and reviewed by no one. The code that is scrutinised was paused for being too much. The controls and practices that are never scrutinised continue to accrete.

2.11 Licensing

But before a builder confronts a single planning instrument or code clause, there is the licensing aspect. The figure below maps what is standing directly and indirectly behind what a residential building contract in New South Wales actually requires: a contractor licence under the Home Building Act 1989 (New South Wales) for any residential building work worth more than $5,000 in labour and materials including goods and services tax, which requires amongst many other things a nominated qualified supervisor (duly qualified experienced and licensed) and eligibility certifications renewed annually, Home Building Compensation cover for every contract over $20,000, professional indemnity, public liability and works insurances with their brokers' fees and each underwriter's conditions, premiums and exclusions, asset holdings demonstrated to the insurer, continuing professional development, industry subscriptions, and the licence, forms and renewal fees themselves. Every box in the figure is a recurring cost that is carried before a single job is priced, and every one of them scales the same for a sole trader building one granny flat as for a company building forty dwellings, or even a thousand houses.

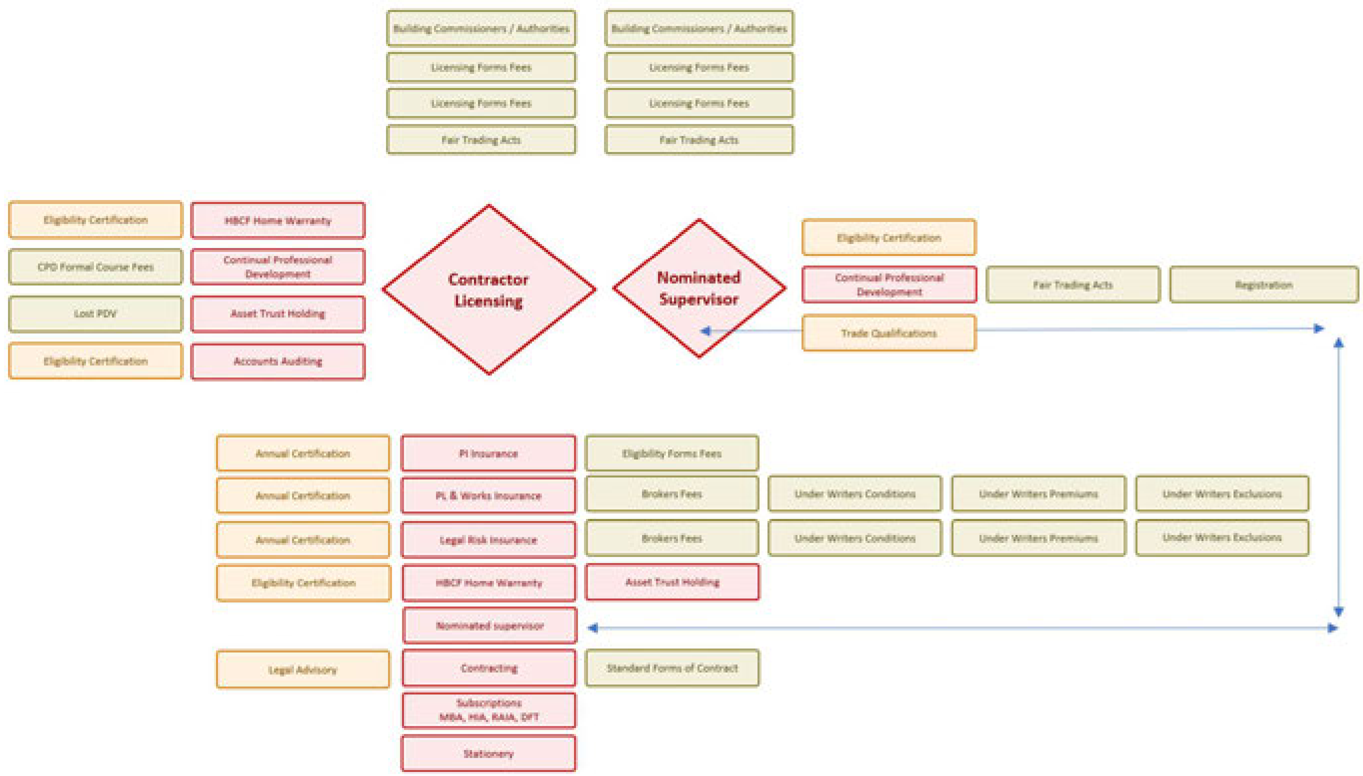

Figure 16 — the process to be a licensed builder

And here is a feature of the system that would be comic if it were not policy: the contractor licence is required only for residential building work. Anyone may lawfully contract to build a multi-storey commercial office tower in New South Wales — steel, glass and concrete, as tall as a planning consent will allow — with no builder's licence at all. The licensed trades on the job are licensed everywhere; the head contractor is licensed nowhere. The post-Opal reforms narrowed the gap only at the residential edge: from 3 July 2023 the registration regime of the Design and Building Practitioners Act 2020 (New South Wales) was extended from class 2 apartment buildings to class 3 and class 9c buildings — purely commercial buildings remain outside it. No published rationale explains why the risk to a home buyer warrants a licence that the risk to the same people at work in an office tower does not. The State's own consultation on its draft Building Bill, which proposes expanding licensing to cover the commercial building sector, is as close to an official acknowledgement of the anomaly as exists. And it is firmly stalled.

Then cross a state border and the definition of the licensed activity itself changes. The same work that requires a licence costing some $3,300 in Queensland — section 42 of the Queensland Building and Construction Commission Act 1991 (Queensland) — licenses at $5,000 in New South Wales, at about $10,000 for registration in Victoria with compulsory insurance from $16,000, at $12,000 in South Australia and the Australian Capital Territory, and at $20,000 in Western Australia; Tasmania sets no dollar threshold at all and stands alone in requiring no home warranty insurance which most states require eligibility for before a licence application is accepted; the Northern Territory runs the lightest regime in the country. Eight regulators, eight sets of licence categories, eight qualification and financial-requirement regimes, for the identical dwelling built from the identical national construction code (with of course various minor state variations). No two jurisdictions agree on licensing requirements or the dollar value at which the same risk to the same consumer begins, and none publishes a derivation for its number or its licensing conditions rationale.

I have tested this personally. I set out to build a job in south-east Queensland and applied for mutual recognition, which — I was assured over the phone by the Queensland licensing authority — would be readily available, no worries. By the time I was ready to offer to build, before I could sign a contract, the accumulated costs had spiralled to over $50,000: asset assurances, Queensland-specific warranty insurance, extension certifications to professional indemnity, public liability and workers compensation to operate interstate, site insurances, work health and safety modifications to comply with state requirements, and fresh endorsements for plant operation, working at heights, scaffolding and heavy-vehicle driving. Are we one country? I ask myself that sometimes. If we want productivity improvements that bite and move us forward, the seams of the federation are a very good place to lock traction into and start to bring us together as a single working productive entity. Or at the very least look rationally at the cost of state borders to our society, culture and economy. It would be good to face them off together and see. I am in no way criticising regional variation as that is the lifeblood of any cultural melange and we are a vast and complex country. But the artificial state borders are a completely different thing. [Redacted]

The Commonwealth has tried to fix this issue with licensing once and softened it once. The Council of Australian Governments' National Occupational Licensing Scheme, with building occupations in its first wave, was discontinued at the December 2013 meeting of that Council — the Productivity Commission later recording that jurisdictions preferred to keep their own regulators, record-keeping arrangements and registration fees. Its replacement, Automatic Mutual Recognition, commenced 1 July 2021 and deems a home-state licence to operate interstate — but Queensland does not participate in the scheme at all, New South Wales exempts its design and building practitioners, Victoria exempts every class of building surveyor, and a builder recognised across a border must in any case obtain the destination state's own warranty insurance before lawfully signing a residential contract. Whatever the bureaucratic intent, the practical effect is that a licence, while close to fully portable for some occupations, is effectively territorial for builders in the largest markets — and, wherever Queensland is involved, for every licensed trade — each state's scheme operating, in each direction, as a wall around its own licensees.

The pattern is the one this submission traces through planning: idiosyncratic requirements accreted jurisdiction by jurisdiction, never evaluated against the outcomes they are said to secure, and maintained by each regulator within its own borders. The first recommendations of the Building Confidence report (Shergold and Weir, 2018) were for nationally consistent registration of building practitioners; eight years on, the licensing map above is the state of play.

And all this just keeps moving costs upwards and productivity downwards.

[Redacted]

Figure 17 — "Resi construction costs": output prices, materials input costs and consumer prices for new dwellings, indexed. Commonwealth Bank of Australia chart from Australian Bureau of Statistics data (source line: ABS, CBA, Macrobond). Third-party figure — retained pending the author's decision; Figure 18 is the author's own rebuild of the same story from the primary data.

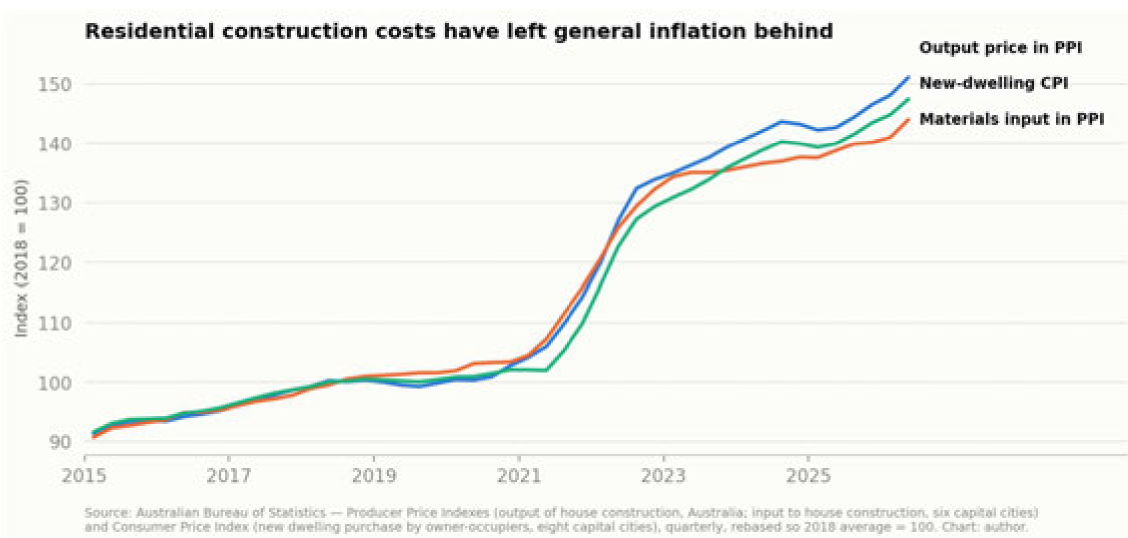

Figure 18 — The same story from the primary data: output prices for house construction, materials input costs and the consumer price of new dwellings, quarterly, rebased so the 2018 average equals 100. Author's chart, built directly from Australian Bureau of Statistics data — Producer Price Indexes

2.12 The size of our houses

Australian houses are, on the best available measure, the largest in the world. The CommSec Home Size Trends Report found the average new free-standing Australian house at 235.8 square metres in 2019–20, ahead of the United States at 233.1 square metres — the two countries trade first place year to year, and no one else is close: the average new British house is under 90 square metres. On the Australian Bureau of Statistics series, the average new Australian house grew from 162.4 square metres in 1984–85 to a peak of 247.7 square metres in 2008–09 — growth of roughly half in a generation — over precisely the period in which the average household shrank towards two and a half people and more than half of our separate houses came to hold one or two people (section 2.8 and Appendix G). Why we feel we need houses this large has an economic answer as much as a cultural one: housing in Australia is an investment market that has made a great many families wealthy, and the same settings that built that wealth have priced others out of it. It is worth sitting with the fact that the country with the world's largest new houses is the country holding this inquiry into why there are not enough homes.

[Redacted]

Figure 19 — CORESIDENCE project map of average household size (persons per household) across the world

[Redacted]

Figure 20 — Greenlivingpedia comparison of new house sizes across the world (circa 2009–11 data) we have been there for over a decade

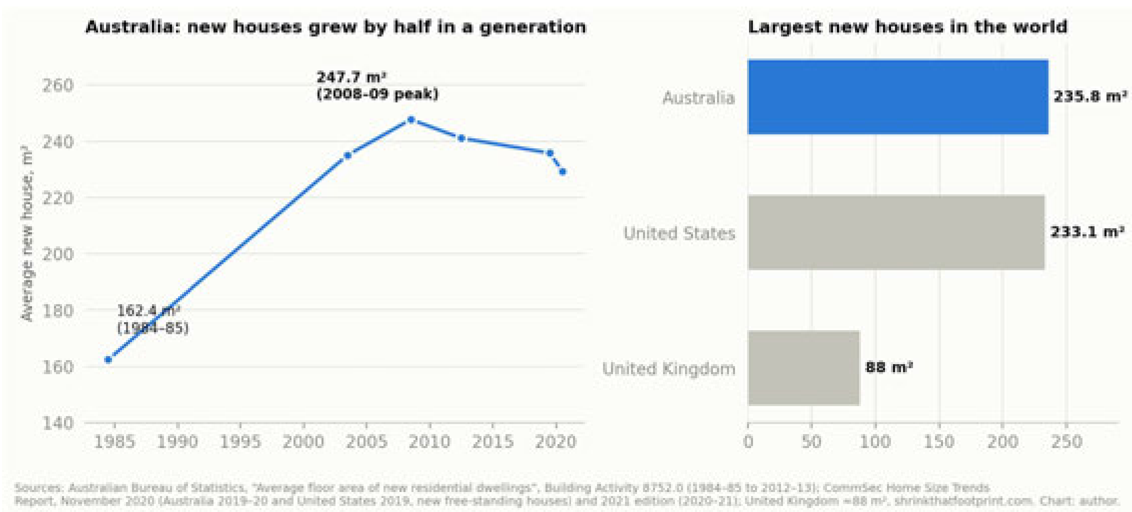

Figure 21 — Average new house size: the Australian series, 1984–85 to 2020–21, and the like-for-like international comparison. Author's chart from Australian Bureau of Statistics (Building Activity, catalogue 8752.0) and CommSec Home Size Trends Report data; full sources on the chart.

And the reasons for this can be seen in the way houses are valued by banks and agents substantially by their floor area: the larger the house, the higher the valuation. Build cost is priced the same way — by the square metre, almost regardless of the actual cost of construction, because that is the measure lenders will finance against. But the sale value per square metre is almost an order of magnitude more than the build cost per sqm. Build costs of $2,000 to $5,000 per square metre result in sale values of $11,400 to $25,800 per square metre (and much higher in some areas). The incentive this creates is profound and runs through every actor in the chain: owner, builder, valuer and lender are each rewarded for building big. We have, in effect, a housing market and a construction industry steered by a valuation algorithm.

The effect on supply is arithmetic. The industry's annual capacity output of residential floor area is roughly fixed by its workforce and capacity, so the number of dwellings it can deliver is set by their average size. Smaller dwellings, more homes; larger dwellings, fewer — a construction sector building 250-square-metre houses delivers half the dwellings of the same sector building 125-square-metre ones.

And counter to this, the arithmetic extends to the stock we already have: converting one 380-square-metre house into two 190-square-metre terraces, side by side or one above the other, doubles the housing on that lot with almost no new building at all and often relatively minor costs— the structure exists, the development contributions were paid long ago and the infrastructure they funded is in place, and the net effect on services, space and streetscape is negligible, while another household is housed.

Councils though resist precisely this as 'densification by stealth'; whole suburbs are barred from dual occupancy applications — Area 11 in Hornsby Shire, for instance — without any test or explanation of why. The suburbs look identical to others where the same dual occupancies are permitted and in some cases encouraged, and the government has made its commitment to more dual occupancies clear. But councils still refuse. The better question is what is being protected by refusing it — this submission's question in miniature. Part of the solution lies in that arithmetic; yet, as sections 2.7 and 2.8 record, floor space ratios, heights and lot sizes are calibrated from the existing large-dwelling pattern — the untested assumption again, working directly against the arithmetic of supply.

2.13 A suggested new system

The evidence above describes a system that has loaded a full-on desk profession onto a trade-based workforce with no training in bureaucracy and no investment in paperwork. There is no gain for builders to achieving the required compliance, no carrot. Just a massive stick. And there is no consideration of the costs of the regulatory burden. There is no cost to the makers and drafters of the regulations and there is no obligation on them to consider the cost benefits of their paperwork requirements.

The proposal set out in detail at Appendix I takes that seriously rather than demanding builders to become better administrators. The proposal here is for a new National (or State) Housing Authority to act as the project's single integrator: a household or future owner comes to the Authority to get a house built, with or without land, with or without plans; the Authority listens, advises and designates an appropriate site, appoints a designer, obtains every approval, arranges the insurances and certifications, prepares a fixed-scope contract, appoints a builder at a set cost, manages the project and sells the completed dwelling to the new owners. The builder just builds. In a Perfect World. The Authority carries the desk, keeping it off the builder's back and it carries the risk of bureaucratic cost blowouts, and warranties, which it is the only party positioned to manage. This is not an additional layer of regulation — it is the relocation of an administrative load that already exists, from the party least equipped to carry it to a party purpose-built for it.

It should be paired with the recommendation this Commission's predecessor inquiry already made and which was never taken up: Recommendation 18 of the *Building Confidence* report (Shergold and Weir, 2018), the reintroduction of the clerk of works. Independent, experienced, trade-qualified verification on site, engaged early and present often, prevents defects at the point where prevention is cheap; it addresses the acknowledged failure of the private certification market; and it provides a respected late-career role for experienced talented careful builders that retains industry knowledge now being lost. Paper controls removed, physical verification strengthened. That is the correct trade, and it is the profound and responsible answer this submission gives to the reasonable question of how standards are maintained if documentation is reduced.

3. The recommendation

This submission makes a single profound recommendation.

A development standard and in fact all regulation pertaining to planning and construction should / must be supported by a stated derivation and published evidence, prepared by the planning authority that sets it, on the same footing as the clause 4.6 justification already demanded of every applicant who departs from it.

It removes no power from any council. It asks only that the assumption be examined and the working shown. Every comparable regulatory field already does this: therapeutic goods, vehicle safety and building product standards, each require that a new and existing requirement be regularly tested and justified, that its costs and benefits to the whole of society be assessed, and that the assessment be published. Planning is the outlier, and has been for seventy years.

The same discipline should extend to the designation of a heritage conservation area and of each building within it — that the benefit claimed be identified, the cost forgone be counted, and the balance be recorded — which is what this Commission recommended in 2006 and recommends again in the interim report of this inquiry.

And let us set up a National Housing Authority, to handle the bureaucratic mountain, protect owners and assist builders to lift productivity to get us out of this housing crisis with a proper measurable reportable achievable 5 year plan.

PART TWO — Responses to the Commission's information requests

Each information request is quoted in full from the interim report, in italics, followed by responses to its points in order.

Information request 1.2

- *What features should governments have in mind when evaluating reforms to move housing regulatory systems towards best practice?*
- *Are the best practice principles and overarching objective (figure 1.2) we have identified appropriate? If not, what changes should be made?*
- *What are some examples of specific housing supply regulations (in Australia or internationally) that: a) exemplify the features of a best practice system for housing regulation b) clearly do not reflect these features?*

1.2.1 — *Some useful features for evaluating reform.*

- First, add up the cumulative burden. Do not assess each regulation in isolation: no body in Australia currently assesses, prices or even catalogues the regulatory load on a single home build as the builder actually experiences it (section 2.3, figures 1, 7 and 22). Every future reform should be measured against the whole wall, not just one brick.
- Second, look carefully and meaningfully at proportionality: at the difference between what needs to be required of major developments and what a single residence, dual occupancy or granny flat should appropriately be confronted with. At this time substantially the same regulatory process applies to a fifty-storey steel, glass and concrete skyscraper as to a cottage renovation.
- Third, evaluate the system's apparent posture toward its applicants: the seeming antipathy to "development" in many aspects of planning practice is widespread, and a best-practice system would measure and correct it — for example by tracking, as part of performance reporting, how often authorities offer an amendment pathway before refusing a small application.
- Fourth – look at global comparative exemplars for increased density and technology in residential buildings. Australia is predominantly a fringe urban culture, with over 85% of people living in cities and towns along the coast. And 40% of us living within a half hour walk diameter of the city core. Why are we, by regulation, a two-storey suburban culture? Is this really who we all want to be? The movement towards low cost, high amenity urban living should be encouraged and supported strongly across all our cities and towns. We should have available for those who want it a highly valued six storey urban lifestyle choice like so many other great urban centres around the world.
- Fifth – reconstruct the planner education system and planning industry to be one that facilitates the construction of appropriate new buildings and eliminates the current anti-development mindset prevalent in planning schools and council planning departments around the country. And ask councils to do the same with their planning committees, education is the key to a broader contextual outlook with appropriate cost benefit awareness.
- Sixth – examine the rapidly emerging (and typically unconstrained or at least untested as to their effects and outcomes) development consent conditions and development contributions practices of many councils, including affordable housing contributions, environmental action contributions and the like. It needs careful consideration of whether it is the responsibility of those building reasonable and modest houses to fund the laudable but in some views unrelated affordable houses programs of national, state and local governments. Or are they simply targeted as the ones with funds available and on the table, who can be hit up for these contributions before they are allowed to proceed with their home building. With no other options. Is a $200,000 affordable housing contribution, imposed as a development consent condition, reasonable for an inner-west terrace house renovation?

1.2.2 — *are the principles so far suggested by the Productivity Commission appropriate?*

Yes, as far as they go. We suggest one addition and one sharpening.

- The addition: a fifth principle — **assess the regulatory and compliance burden cumulatively** — for the reasons stated above.

- The sharpening: "keep the process simple". All principles, and the practices devolved from them, should carry an **explicit proportionality test**, so that process weight scales with project scale and risk.

And again while the principles are in each specific case probably appropriate, their combined effect is not. To put the onus on the builder to address complex bureaucratic requirements and jump through the multiple adjacent, or sometimes opposite, specified hoops at the appropriate times is not appropriate; it is costly and a waste of the resource. Builders are not bureaucrats, almost by definition, certainly by inclination, attitude and training. They aren't good at this sort of thing in general, and in general they are good at building and know how to get things built.

The entire system needs a re-orienting. The current system seeks to create a protective bureaucratic shell around building owners – the system should quite rightly provide that shell, and manage its requirements – but not demand builders do the paperwork. The traditional system of Building Inspectors or Clerks of Works or 'Archi-Tecton' in their traditional role; continually assessing and certifying the construction as it proceeds, forms an appropriate policing system taking the paperwork compliance regimes away from the builder and ensuring the PCA or Council or State take on the responsibility of getting it right and weeding out poor work. And insulating the builder from litigious owners seeking to not pay the final invoice or to make some out of contract financial gain following the numerous memes across the less scrupulous parts of the web.

"Just let the builder build."

1.2.3 — examples.

Some things that are clearly not best practice:

- development control plans totalling more than 75,000 pages across one state, with a single council's untested and unlegislated and unreviewed plan sitting at 3,762 pages;

- consent conditions routinely running to 60–100 items on small projects;

- a thirteen-fold spread in average determination times between councils operating under identical legislation (section 4.3); and the fifty-document evidentiary load documented in section 4.2 for a modest two-dwelling terrace house application.

Closer to best practice:

- The complying development certificate pathway where it genuinely applies – there needs to be a concerted effort at simplifying those regulations back to their original intent. Like planning regulations they have been subsumed by a mountain of clauses and conditions and exemptions to the point where they simply cannot be applied to a large swathe of the country. That was not the intent behind these provisions. But the planning bureaucracies have fought them and beaten them down with large sticks and the planners with access to the politician's ears have been allowed to do that, somehow;

- The NSW pattern-book pre-approval initiatives, which are yet to be mauled by the councils and their planners but they are still new and fresh;
- the pathway concept in section 68 of the Local Government Act 1993 (New South Wales) — which fails in practice only because it was designed for caravan parks and is misapplied to permanent manufactured homes (section 5). There needs to be a new State environmental planning policy for prefabricated housing, both modular and kit-of-parts, so the cracks are not large enough for whole houses to slip through them. It seems these are wanted by our society, so why can't they be built?
- A new national preapproved prefabricated building testing and certification system, based on the vehicle certification processes, allowing standardised buildings and systems to be purchased and installed, like cars. With some government assistance for this at least at the start so we have a working industry based here in Australia. Though this will likely lead to offshoring of the prefab construction industry like every other industry at least it will give a viable cost reduction and productivity improvement option for Australians.

Information request 2.1 (land-use controls)

The interim report's consolidated listing contains two information requests numbered 2.1; this responds to the land-use controls request, and the development cost stacks request is answered separately below; its responses are numbered 2.1.6 and 2.1.7 so that every response number in this submission is unique:

- *Do design-focused regulations (e.g. tree canopy requirements, apartment layout and storage) directly impact commercially feasible capacity?*
- *What impact would reducing the coverage of heritage overlays have on housing supply?*
- *What land-use controls need to change to enable more alternative dwelling types to be built? What impact would such reforms have on housing supply?*
- *Is there a need for further reforms to enable a greater supply of small secondary dwellings such as granny flats?*
- *Are there other land-use controls which significantly impact supply?*

2.1.1 — design-focused regulations. One observation from the small end: for small secondary dwellings the design rules that bind are floor space ratios, utility and siting conditions rather than aesthetics, and where they are well considered and appropriate they work well — Victoria's small second home provisions, for example, prohibit connection to reticulated natural gas and require no parking space, both checkable at the point of purchase. Rules of that kind cost nothing. The site areas covered by small dwelling exclusions from the more arduous and unachievable standards are typically very small and are typically also chosen arbitrarily within planning departments and not legislated or considered at the legislative level. Sydney Council excuses sites below 130 sqm from canopy requirements. Though it would be fairer if that was set closer to 400sqm or larger as planting a large tree with a 6m diameter canopy to get a 15% coverage in a 155sqm, closely held terrace with buildings on all sides, old brick footings, clay pipes and powerlines underground and cables overhead is just going to lead to grief, sooner rather than later. That's just practically and rationally obvious. Hornsby Council requires Dual Occupancy applications to design and install on-site stormwater detention systems to reduce the stormwater outflow in 1 in 100 year deluges to below the current outfall on the site in a 1 in 10 year deluge. Given the site is a fixed unchanged area and that soil saturation will occur within 15 minutes in a 1-in-100-year rainfall event, all water falling on the site will flow to the street and to the council's stormwater system after 15 minutes in any case. It's widely acknowledged by hydraulic engineers that this is a nonsense requirement. It has been again initiated by planners without any experimentation, technical cost benefit analysis or review of its success or utility.

Whatever their purpose, the observable effect of these requirements is to raise the cost and slow the pace of small residential development — and the São Paulo evidence at section 6 explains why systems drift this way without any bad faith on anyone's part: the costs of change are concentrated and present, the gains dispersed and absent. The rules that cost are almost entirely the discretionary ones, addressed in more detail at information request 3.1.

2.1.2 — heritage overlays. This critical question is answered in full, with the evidence the Commission requests, in the response to information request 2.3 below. We note here only that in the section 4.2 case study, considered entirely typical in the author's experience, heritage provisions supplied five of the twenty refusal grounds on a two-dwelling infill project, one of which was to be on a vacant lot, inside a designated growth area. And despite the legislated 9-metre building height control in the local environmental plan — the purpose of which, one would think, was to allow for greater density of dwellings potentially up to three storeys, the unlegislated heritage controls in the development control plan were taken to entitle the planner to limit the build to a single storey and to refuse the development on the adjacent vacant lot. Again the randomness of the heritage reasoning behind the refusal and the lack of qualified professional rationale and openness about the reasoning or any negotiation of the outcome is simply destructive to the desired pathway of addressing the national housing crisis. It is keeping families out of homes in sought after areas and fencing them off for the elite residents within them. And the entire heritage mechanism is unsupported, unprofessional and has yet to be justified one way or another, despite its massive impact on our cities and built environment.

2.1.3 and 2.1.4 — alternative dwelling types and granny flats, answered together. Over the past four years the states have individually converged on the same answer: Queensland removed the restrictions on who may occupy a secondary dwelling, previously a family occupied granny flat only, in September 2022; South Australia amended its regulations in 2023 so ancillary accommodation can be leased; Western Australia removed planning approval altogether for compliant ancillary dwellings in April 2024; Victoria's small second homes of up to 60 square metres no longer require a planning permit; the Northern Territory permits independent units without planning approval in most cases. The direction is proven. But this is eight versions of the same reform — eight different floor-area caps, eight approval pathways, eight sets of conditions — all of which need to be applied to a single manufactured factory product that does not change at the state border. What is missing is the product layer: national pre-approval of specific manufactured dwelling models. The exact analogy already exists in Australian law: under the Road Vehicle Standards Act 2018 (Commonwealth), a vehicle model is type-approved once, nationally; individual vehicles are then purchased — online if the buyer wishes — delivered, registered and driven, without each driveway requiring a fresh engineering assessment. A factory-built granny flat should work the same way. The model would be assessed once against the National Construction Code and the relevant Australian Standards — the Australian Building Codes Board's national voluntary certification scheme for manufacturers of modern methods of construction is the natural seed — and every state planning system would recognise the pre-approved model as deemed-to-comply, collapsing the per-site question to what is actually site-specific: siting, footings and service connections, a days-not-months check.

From the author's own record, this is not speculative: across some 250 factory-built pod dwellings over twenty-five years, current models using repeated standard parts in all sorts of different ways have been flat-packed into standard shipping containers, taken to all sorts of sites, urban, suburban, rural and remote and even hyper remote out on offshore islands and overseas, assembled by a small crew with hand tools on disturbance-free footings in thirty days or less, cyclone-rated and bushfire-resistant, fully demountable and reusable at end of life, and carry built-in sensor suites — smoke, air quality, carbon dioxide, temperature, humidity and moisture — that allow performance standards to be defined and monitored continuously for the life of the dwelling, which answers the reasonable question of how compliance is assured without multiplying inspections.

Tenure should follow the product: a dwelling that can be bought like a car can be leased like one, requiring no capital outlay from the householder, with the lease cost carried as an operating expense; particularly for secondary smaller dwellings and where the dwelling may lawfully be rented — to anyone, not only family members, as the reforming states have already accepted — the rent offsets the lease and each backyard becomes low-cost accommodation stock in places where the infrastructure already exists. The supply impact is the point: this is the one dwelling type that can be added at scale, within months, without land release, rezoning or new infrastructure and with little to no impact on neighbours. This is a valid and immediate solution to a housing crisis and is within the reach of our systems here and now. But they are pretty much ruled out by planners over large swathes of our communities. Again with no rational examination of why they are banned, or any cost benefit analysis of, the regulations and restrictions imposed.

2.1.5 — other land-use controls that significantly affect supply: the reclassification cliff.

Zoning and desired future character statements are of course again completely randomly generated and often significantly affected by vested interests, one way or another, and their effects untested. They are practically always based on the locally evident existing patterns or at least the perceptions of what those patterns are and their extents. To the best of my knowledge and research they are never tested or reviewed or rationally analysed as to the purpose or cost benefit to society in general.

Rezoning is seen as a developer driven negative that sets existing residents against newcomers. There are certainly incompatible functions that shouldn't be side by side, especially in our residential areas, fair enough. But technology has moved manufacturing and production into a different format in this country, and continues to move further away from anything harmful to humans and the environment. There is almost no real manufacturing going on in Australia and that which does happen is now getting towards being pretty much benign to its surroundings. Long term experience has shown that intermeshed activities make for vital, busy, functionally productive environments. Newtown in Sydney and other suburbs like it in all our cities are classic examples, various light industries, commercial activities, residences, apartments, converted industrial buildings, restaurants, hospitals, professional rooms, shops, and much higher density living, enabling people to live in a highly serviced environments without vehicles and often without kitchens or lawns, without dying or feeling their lives are unfulfilled…

despite the best efforts of local councils to prevent all development and control everything with overlays with suburban building limitations and FSRs.

Another area which needs review and clear rational assessment is the potential for countering the prohibition of the application of complying development permits for areas in bushfire risk and flood risk areas. These are technical, practical issues that are addressed by construction techniques and are technically (generally speaking) outside the planners' area of expertise and qualifications, whatever those might be in the various circumstances. There is no need for these areas to be exempted from the housing State environmental planning policies on planning grounds. Those policies can simply have bushfire and flood resistance measures embedded, as they already do, referenced to the building codes and Australian Standards in the same way they deal with the Nationwide House Energy Rating Scheme and Building Sustainability Index systems for energy efficiency. These current blockages are not matters for planning or that will be improved by a DA. That is just a typical council's planning department's method of clawing back development control over as much of their constituency as they can, again for no stated reason, or research into the benefits and costs of that control, just because they want that control. I cannot see what taking those areas to a development application achieves. Bushfire and Flooding risks are well mapped and are clearly shown on all Council Planning Certificates and easily seen and understood by building certifiers who are qualified to deal with the technical issues involved. The onus for compliance and safe building carries to the construction certification processes and the building inspector to ensure the requirements are met. Easily done within the Complying Development compliance process.

Then there are the issues of subjective building classification in planning. A small secondary dwelling that acquires separate street or laneway access, a separate lease, or separate electricity or water metering, risks being reclassified as dual occupancy or potentially a multi unit development by planners — a different assessment pathway, very significant development contribution triggers, and in the Australian Capital Territory a lease variation charge that can run from tens of thousands of dollars to more than two hundred thousand dollars. The building is the same; the occupants are the same; the regulatory cost changes radically depending on which way a door faces and whose name is on the meter. Small second dwellings on dual-frontage lots should be able to take alternate street access, and be separately let, without changing classification — the classification should follow the built form, not the tenancy arrangement, or a council planner's reading of 'overdevelopment', with the contributions that follow.

ANECDOTE: A case from our experience, an elderly related party client had a modest suburban residence in Hornsby Heights on which we were asked to build a granny flat in 2012 for her to move into so her daughter's family could move into the main house to help in care and have a manageable affordable living arrangement. Seemingly a fair, reasonable and socially responsible project. We couldn't get approval for a granny flat back then, so had to get a renovation approval to extend the house with a new bedroom, study and bathroom (without a separate laundry or kitchen) then we had to apply for another approval once that was built to separate it off and add the kitchen and laundry and a fire separating wall to reclassify it as a granny flat, but council decided it should be a 'multi-unit residential development', with applicable contributions and Class 2 construction regulations. Madness. But we did it to get the job done and let Grandma get on with her life and much needed in home care.

Grandma eventually passed and given that the granny flat was already a classified separate dwelling we thought that separating it off as a dual occupancy so that it could be sold and fund the family to stay in the main house would be simple. But no, rules, regulations and driveway width and site area requirements and that the thick smudged texta line defining a nearby bushfire risk area on a hand drawn map, touched the back corner of the lot, so it was designated a bushfire risk area where Dual Occupancies were prohibited by council – at least not without a full DA and were considered unlikely to get through. So the proposal was found to be intractable and we were advised by council planners that it couldn't be done within the DCP. Despite having functioned like that for over a decade and with no changes being needed to the buildings. The planner's comment to us in the pre DA meeting was that the council's regulations were not there to facilitate people making money out of developments in suburban areas. The consideration that this action would provide a new family dwelling for the area with no change to the built fabric and low cost and immediate outcome with no social or servicing or traffic issues was lost on council's planner.

ANECDOTE: Another case in point – a small two dwelling infill project in the inner south of Sydney gets hit up for an 'Affordable Housing Contribution' set at 3% of the property value for any 'development' over 200sqm. So given a standard dwelling in Australia averages 242 square metres … and a terrace house over 200 sqm is not unusual, that a comparatively small, modest dwelling can be hit with a $200,000 contribution demand intended for large developments is simply unfair and unreasonable and prohibits increasing our housing availability in this crisis. Again this boundary requirement of 200sqm is simply a number picked out of the air in so far as can be determined through persistent research, and it is untested as to its cost benefit performance and its effect on the generation of new residential housing in particular. And testing the appropriateness of getting ordinary people improving their terrace houses to pay for the affordable housing needs of society would be fair.

Information request 2.1 (development cost stacks)

- *Can you provide information, data, or analysis on development cost stacks across different housing typologies and geographic areas (for example, construction cost information)?*
- *Can you provide information, data, or analysis on the extent to which dense housing typologies differ in commercial feasibility (for example, comparisons between apartment and townhouse developments)?*

2.1.6 — cost stack data.

From our own project records for small Class 1 buildings, our best estimate is that some 63% of the total delivered cost is not construction (section 4.1; method appended).

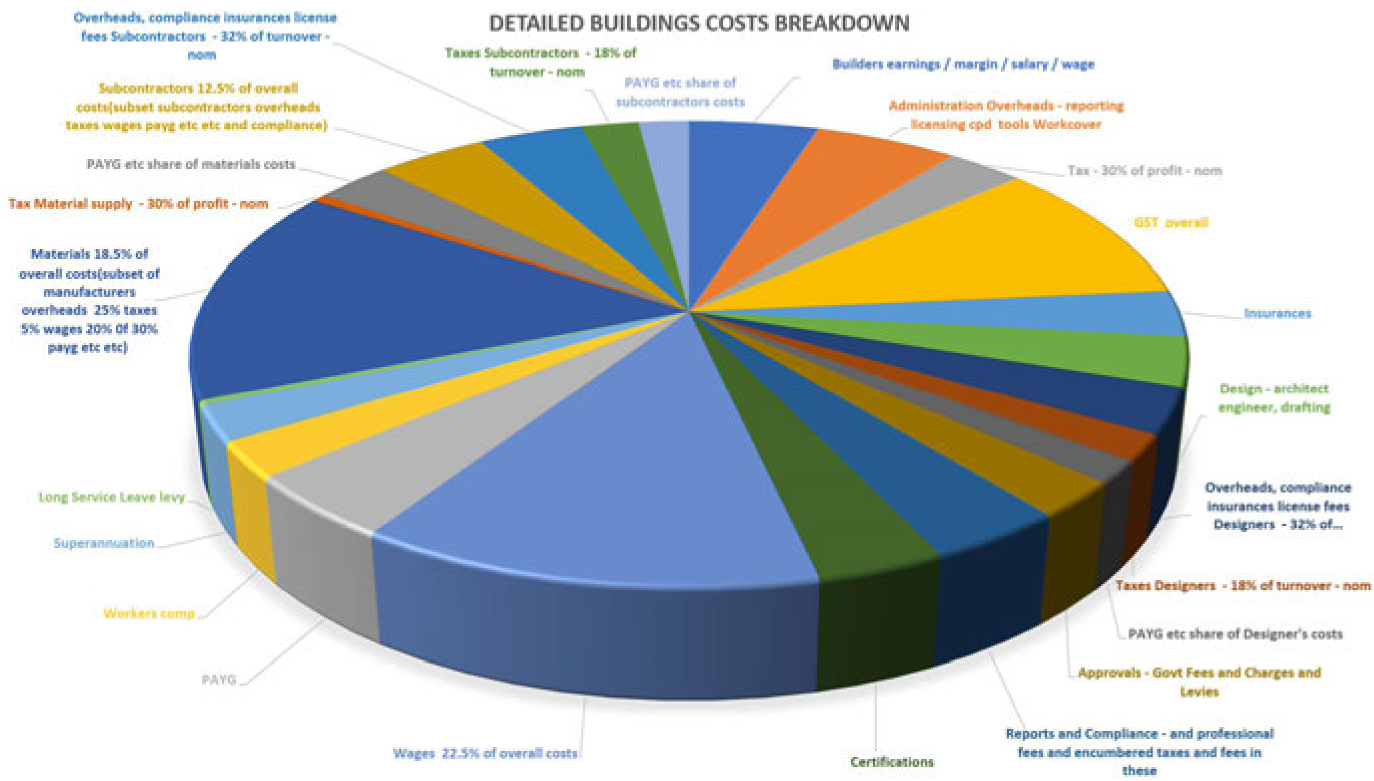

Figure J1 — Detailed buildings costs breakdown: the same estimate as Figures 8, 25 and 26, fully disaggregated into the author's nominal component allocations, from the author's conference presentation. Percentages are nominal estimates pending the method note (section 4.1).

As a single concrete instance of how contribution settings bear on small infill: the case-study project of section 4.2 carried an affordable housing contribution levy exposure approaching $200,000 on a single- to two-dwelling infill project totalling 200 square metres or more — a threshold effect that by itself can determine whether small infill proceeds at all. Whichever way the threshold is set, an applicant should be able to know before lodgement whether the contribution applies and what it will be. At present that depends on whether an officer chooses to run the numbers, and where a levy is found not to apply the finding is recorded without reasons.

2.1.7 — density and feasibility. Our evidence base is small-scale and manufactured housing rather than apartment development, and we defer to others on apartment-versus-townhouse feasibility comparisons. We note only that at the smallest scale — the granny flat, the dual occupancy, the two-terrace infill — feasibility is governed as much by process cost and process time as by construction cost, and those components are within governments' direct control.

Information request 2.3

- *What evidence do you have on which land-use controls or combinations of controls are the greatest constraint on housing supply in your jurisdiction?*
- *What reforms to land-use controls are likely to boost housing supply in each jurisdiction? What are the expected impacts of reforms on zoned capacity, commercially feasible capacity and/or other measures of supply? What are the expected impacts on positive and negative externalities? We are particularly interested in quantitative evidence on reforms to minimum lot size and reducing coverage of broad heritage controls.*

- *How should potential reforms be implemented? What does the evidence show about the effectiveness of past zoning and land-use reforms in Australia?*
- *What evidence do you have on the effects of mandatory and voluntary inclusionary zoning requirements for affordable housing on housing supply and affordability?*

Cross-reference. *The evidentiary basis for this response is set out at length in section 9, The heritage issue in planning control.*

2.3.1 — the greatest constraint in this jurisdiction, with evidence. In this jurisdiction – greater Sydney - the standout combination is the heritage conservation area laid over medium and low-density residential zoning. The New South Wales Productivity and Equality Commission — the source the interim report itself cites at box 2.2 — reports that around a quarter of residential-zoned land within 10 kilometres of the Sydney central business district carries some form of heritage protection, 20% of it as heritage conservation areas; that North Sydney, Newtown, Edgecliff and Redfern are between 50% and 85% heritage protected; and that the proliferation of these areas “drives up prices and rents across the city, while at the same time suppressing land values for the owners of these properties, imposing extra compliance costs on them”. The mechanism deserves the Commission’s attention as much as the coverage. Clause 5.10 of the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) — a compulsory clause of every local environmental plan in the state — requires development consent for altering the exterior of any building within a heritage conservation area, expressly including “changes to its detail, fabric, finish or appearance”; conservation-area land is routinely excluded from exempt and complying development pathways “even if the proposed development has no or limited impact on heritage values” (New South Wales Productivity and Equality Commission, November 2024); a heritage impact statement may be required for any development in the area, and even for land merely “within the vicinity” of it; and inclusion of an entire suburb or two or three in a conservation area requires no statement of significance for the individual properties captured, no cost-benefit analysis at any stage of the plan-making pathway, and no consent from, or compensation to, the owners. The conservation-area layer also operates before assessment begins: under the consent authority’s community participation plan, demolition of a contributory building within a heritage conservation area sits in the widest consultation category — 28 days and a 75 metre notification buffer against 14 days and 25 metres for the same dwellings outside the area — doubling the waiting time and trebling the notified radius as a mechanical consequence of the overlay.

The section 4.2 application was notified at a 75-metre radius for 28 days, to 570 residents.

And the Statement of Heritage Impact report for the DA was ignored or rejected by Council’s planner and heritage officer.

I have prepared Statement of Heritage Impact documents, as a registered architect with decades of experience in heritage house work and a number of awards for heritage renovation work over more than 30 years now of heritage-area infill work, so the following is offered as evidence from inside the system. The statement of heritage impact prepared for the section 4.2 case-study project ran to 40 pages and addressed sixteen prescribed matters for consideration — up to and including World Heritage significance — with a 30-page photographic survey addendum of the building, its context and local building features - for a proposal of two dwellings on two adjacent 118-square-metre lots, occupied by an unlisted but designated “contributory” cottage whose roof had been replaced in concrete tile in the

1970s, whose chimneys and fireplaces had been removed, front door replaced with a flat panel hollow core 'Bunnings' door and the verandah removed and integrated into the main 1970s roof form for which no record of the original builder or owner survives.

Australia ICOMOS (the Australian national committee of the International Council on Monuments and Sites) told the Commission's 2006 heritage inquiry that such documents cost in the median range of $10,000 to $50,000 for complex sites while conceding it was *"unaware of any collated data on such costs";* simple conservation-area statements currently start around $1,600 on Sydney consultancy rate cards. In the section 4.2 anecdotal case study, heritage provisions supplied five of the twenty grounds of refusal, and, in the author's assessment, the remaining grounds add little to a refusal that rests primarily on the council heritage officer's opinion.

It seems pretty clear to someone working in the industry over decades that 'heritage' as a poorly defined concept is being exploited and broadened by the planning industry and local councils to broaden its control over development. As a means in itself. Without adequate reasoning, rationalisation or even a goal over the long term.

2.3.2 — reforms and the quantitative evidence. We support reform direction 2.5 — replacing blanket heritage conservation areas with targeted specific listings justified by cost-benefit analysis, with robust review and delisting — without reservation, and we invite the Commission to say plainly that it is reviving its own design for resolving this issue.

The Commission's Conservation of Australia's Historic Heritage Places (Inquiry Report No. 37, 2006) found the arrangements for privately owned places *"often ineffective, inefficient and unfair"*.

The same report found that in listing decisions ***"typically, there is little, if any, consideration of the costs imposed either, on the owner or the community more generally"*** (finding 6.2).

It found heritage controls being applied ***"to places that have little, if any, heritage significance in order to achieve other planning objectives"*** (finding 7.6);

It recommended statements of significance and codified automatic-approval standards for every heritage area (recommendation 11.1), removal of the heritage impact statement requirement for properties not individually listed within a heritage zone (recommendation 11.2), and an owner's appeal against listings imposing unreasonable costs, resolved through negotiated conservation agreements (recommendation 9.1). The then Australian Government accepted the principle that owners *"should generally not have unreasonable costs imposed upon them by heritage listing",* declined the mechanism, and referred it to a ministerial council, where it lapsed. Twenty years of the coverage growth documented at box 2.2 is the measured cost of that lapse.

The valuation evidence supports targeting specific valuable heritage elements, not blankets covering whole areas. The national choice-modelling study commissioned by the heritage agencies themselves (Allen Consulting Group, Valuing the Priceless, 2005) found the community willing to pay $39.50 per person per year to prevent demolition of significant places but only a further $2.38 to prohibit modification — the public wants the exceptional kept, not whole suburbs frozen — and found willingness to pay was negative for increasing the share of protected places over 100 years old. The Victorian replication (SGS Economics and Planning for the Heritage Council of Victoria, 2018) valued the entire ~2,300-place Victorian Heritage Register at about $1.1 billion, found nineteenth-century and civic buildings consistently valued and post-1971 stock not valued — while Victoria protects roughly **186,000 buildings under overlays**, two orders of magnitude beyond the tier the valuation evidence supports. And protection without funding does not even conserve: Heritage Victoria estimated in 2003 that 20% of places on its own register were in poor or very poor condition.

Three institutional facts, verifiable on the face of the instruments, explain how coverage grew so far beyond the evidence, and each points to a specific addition to reform direction 2.5.

First, no Australian jurisdiction imposes any legislated qualification, registration or accreditation requirement on the heritage consultants whose assessments drive listing and refusal decisions: the Heritage Act 1977 (New South Wales) is silent; the Design and Building Practitioners Act 2020 (New South Wales) contains no heritage class; the government's own guidelines merely "recommend" that a statement of heritage impact be prepared by "an appropriately qualified and experienced heritage professional", undefined — while the architect whose design that assessment overrides must be registered under the Architects Act 2003 (New South Wales). Appendix H records one de-identified instance in which a mandatory four-part evidentiary requirement for demolition of a contributory building was recorded as satisfied with none of the four documents present.

Second, the significance criteria are not statutory text: the seven New South Wales criteria were developed by the Heritage Council in 1999 and gazetted under section 4A(3) of the Heritage Act 1977 (New South Wales), carry no quantitative threshold, and expressly direct that a place should not be excluded merely because similar places are already listed — an anti-scarcity instruction that guarantees list growth.

Third, listing is uncompensated by design: the High Court of Australia held in Commonwealth v Tasmania (1983) 158 CLR 1 that development restriction is not an acquisition of property, and section 51(xxxi) of the Constitution does not bind the states — so, as the Commission put it in 2006, governments "appear to have the power to take or diminish private property rights via regulation without paying compensation", and those who seek listings bear none of their costs (finding 7.4). Reform direction 2.5 should therefore gain: an accreditation floor for those authoring significance assessments; a mandatory statement of significance for every property a control captures; and codified deemed-approval standards within whatever conservation areas survive review.

2.3.3 — implementation, and the evidence of past reforms. No new machinery is needed in New South Wales: amendment of clause 5.10 of the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) and of the local planning direction on heritage conservation issued under section 9.1 of the Environmental Planning and Assessment Act 1979 (New South Wales) would implement recommendation 11.1 and 11.2 as a discipline, state-wide, in a single instrument each, with existing conservation areas sunset-reviewed against the new test. On the effectiveness of past reform, the most instructive evidence is the fate of Inquiry Report No. 37 itself — accepted in principle, implemented nowhere. We ask the Commission to pair reform direction 2.5 with an express implementation-tracking recommendation this time. The most recent state experience points the same way: heritage items were excluded from the New South Wales Low and Mid-Rise Housing Policy but heritage conservation areas were deliberately retained within it, subject to full council merit assessment — so the state's flagship supply program carries a discretionary heritage risk layer across precisely the inner-ring land where it was meant to bite. And still no controls were placed on heritage consultants and council heritage advisory officers to ensure they have the skills, knowledge, certification, professionalism and Professional Liability insurance to make appropriate responsible advice in such critical development assessments costing the applicants many tens of thousands of dollars or much more in larger projects.

2.3.4 — inclusionary zoning. Outside this submission's evidence base.

Information request 3.1

- *What evidence do you have for the main causes of delays in receiving approvals for new housing?*
- *When is discretion useful in planning processes, and when is it not useful? Are there examples of subjective requirements that should be changed or removed to improve certainty for developers?*
- *How should third-party appeal processes be changed to better balance the benefits they provide to community members and the uncertainty and delay costs they impose on developers?*

3.1.1 — causes of delay. Our direct evidence is at sections 4.2 and 4.3: vastly extended notification periods and breadth, multi-stage processes with revision loops; information requests arriving sequentially rather than at once; referral agencies operating on independent clocks with no shared case management; determination practices that substitute a withdraw-or-determine ultimatum for an amendment pathway, in the case study, with meeting planning timeframes recorded as an express consideration in recommending refusal rather than negotiation (section 4.2); and a thirteen-fold spread in council determination times under identical legislation, which indicates the delays are administrative and cultural rather than statutory process related. The Land and Environment Court's 2024 data quantifies the end point: 58% of development application appeals finalised were deemed-refusal appeals — litigation commenced because no decision was made within the statutory period (section 4.3).

One cause is fixed before assessment begins: the notification period itself. For an ordinary application the Environmental Planning and Assessment Act 1979 (New South Wales) sets no period — Schedule 1, clause 7 adopts whatever the council's community participation plan specifies, with 14 days only as a default — and sets no maximum. The 28-day figure applied by some councils' widest categories is inherited from the designated-development and environmental impact statement provisions of the original 1979 Act. Developed for very serious major projects with potentially significant national impacts. It was never intended for simple modest residential dwellings. No jurisdiction has published any evaluation connecting the length of a notification period, or the breadth of a notification area, with the number, substance or merit of the submissions received. The settings are policy fossils, and every one of them is an elevating false floor under determination time.

We recommend the Commission endorse the direction of the draft Statewide Community Participation Plan (on exhibition April 2026) — one plan replacing more than 120 council plans, with compliant small-scale housing exempt from notification altogether — and strengthen it in three respects.

First, resolve its heritage ambiguity: the draft exempts demolition "excluding heritage items", leaving contributory buildings within heritage conservation areas unaddressed. These need to be specifically addressed. What is permitted and why and what is not permitted and why. And allow some case law to define these things exactly precedent by precedent.

Second, for small-scale housing that remains notifiable, confine letter notification to adjoining and adjacent owners and occupiers — the only cohort the evidence shows actually engages — with a short fixed period.

Third, require that notification settings be evaluated and the evaluations published, so that periods and radii are calibrated to evidence rather than inherited. The available research (Australian Housing and Urban Research Institute Final Report No. 197, 2012; Taylor, Cook and Hurley, 2016) finds **three quarters of applications draw no objection;** a median of two where any arrive; volumes tracking suburb advantage rather than notification arrangements; and objection counts influencing decisions politically rather than rationally or legally.

3.1.2 — discretion and subjectivity. Discretion is useful where genuine site-specific judgment is required — heritage fabric, and density decisions in a specific context running counter to broad area-based controls — and is not useful where it converts design into a guessing game. The clearest examples of subjective, undefined requirements that should be tightened or removed are "heritage contributory", "design excellence", "high-quality urban form", "sympathetic infill" and compatibility with "desired future character": standards that are determinable only after lodgement, at the assessing officer's discretion. An applicant cannot rationally design to them in advance; a designer can guess what the planner might say, but the terms function as delay and refusal machinery rather than quality machinery. Where such judgments are retained they should be exercised at pre-lodgement, in writing and with reasons, be reviewable, and bind the consent authority as well as inform the applicant.

None of the four is defined where it is applied, and each was written for something other than a house. "Design excellence" entered New South Wales law on 3 March 2000 as a central-Sydney competition-and-bonus mechanism for buildings over 55 metres, with a merit test attached that has since been copied by councils into clauses reaching semi-detached cottages, while the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) contains no such clause and no court has defined the term. "Desired future character" began in the zone-less Warringah Local Environmental Plan 2000 (New South Wales), which itself provided that "nothing in a description on desired future character creates a prohibition"; the Standard Instrument does not use the word "character", the Chief Judge has held the term undefined (Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115), and the Court now presumes a proposal that complies with the numerical controls has met it (Gunnamatta Bay Holdings Pty Ltd v Sutherland Shire Council [2025] NSWLEC 1230). "Sympathetic" is a heritage-conservation word from a 1999 Burra Charter note that the 2013 revision deleted; it appears in neither the Heritage Act 1977 (New South Wales) nor the standard heritage clause, and every guideline that uses it says new work should not copy. "High quality urban form" was never in a made instrument for the applicant's area — it sat in a draft plan of 2020, was applied to dwellings under the "proposed instrument" limb of section 4.15, and became "urban place" when the plan was made in 2022. Appendix K traces each phrase, with the instruments and dates.

Who applies them matters as much as what they mean. Every clause makes the test the consent authority's opinion; the Audit Office of New South Wales found in 2022 that 96 per cent of applications are determined by council staff under delegation; the Court has held the opinion must be the decision-maker's own and cannot rest on architectural evidence alone (Toga Penrith Developments Pty Ltd v Penrith City Council [2022] NSWLEC 117); referral to a design review panel is compulsory only for apartment buildings of three or more storeys; and no provision of the Environmental Planning and Assessment Act 1979 (New South Wales) or its 2021 Regulation requires the person making the judgment to hold any design, heritage or other qualification — while the State requires a registered architect to design an apartment building and protects the title "architect" by statute. The State's own 2000 competition rule and 2002 design review panels were introduced, on the record, because council staff lacked design expertise; the remedy was built for apartment buildings and never extended to the houses that make up most applications. The Department's May 2026 discussion paper on low-rise housing reform points the right way — numerical standards with stated objectives, replacing development control plan controls, to "reduce ambiguity for applicants and consent authorities" — and does not use the word "character". Appendix K, sections 11.2 and 11.6, carry the record.

The gap is structural rather than incidental. The Environmental Planning and Assessment Act 1979 (New South Wales) names the consent authority and lists at section 4.15 what it must consider, but says nothing about who is fit to consider it. The power reaches the assessing officer through section 377 of the Local Government Act 1993 (New South Wales), which lets a council delegate its functions to the general manager, and section 378, which lets the general manager sub-delegate them to any employee; neither imposes any qualification on the delegate. Every other participant in the delivery of a dwelling has, over two decades, been brought under a statutory register: the certifier under the Building and Development Certifiers Act 2018 (New South Wales), with registration, insurance, a conflict-of-interest prohibition and a disciplinary regime, council-employed certifiers included; the engineer and building designer under the Design and Building Practitioners Act 2020 (New South Wales); the builder and trades under the Home Building Act 1989 (New South Wales); the architect under the Architects Act 2003 (New South Wales). Every person who acts on a development consent is licensed, registered or accredited by statute. The one person who is not is the person who decides whether the consent is granted. The asymmetry follows the applicant into the Land and Environment Court: the experts an applicant must retain to contest a refusal are held to section 79 of the Evidence Act 1995 (New South Wales) — specialised knowledge based on training, study or experience — and to the Expert Witness Code of Conduct in Schedule 7 to the Uniform Civil Procedure Rules 2005 (New South Wales); the officer whose decision they contest is held to neither.

The same absence of control governs who makes technical findings. In the section 4.2 case study, the application was supported by a flood risk assessment by a qualified hydraulic engineer concluding the site sat above the relevant maximum flood levels; the refusal nevertheless asserted flood risk extending to "risk to life" despite no referral being made by the designated planner to the council's own stormwater engineering department; we subsequently obtained the consent authority's own flood information certificate for the site — issued after the determination — which clearly records the site outside the 1% annual exceedance probability event and the floor level of the existing dwelling to be above the probable maximum flood level and categorised the properties in the lowest hydraulic hazard category in all events. Nothing in the system required that contradiction to be resolved by anyone qualified to resolve it, and nothing reviews, records or penalises a technical ground taken by a town planner without technical competence behind it. Planning qualifications do not include hydraulic engineering; no instrument requires a consent authority to put a hydrological question to a hydrologist, despite stormwater management being an essential and intrinsic function of almost all local councils and most councils having an in house, qualified hydraulic engineering expert on staff. The repair is a qualified-assessment rule: where a ground of refusal is technical — bushfire, fire, flood, stormwater, structural, geotechnical — the assessment must be made or reviewed by a person qualified and certified as a professional in that discipline, and a certified professional report stands unless rebutted in writing by an equally qualified contrary assessment. That pre-eminence of expertise is surely a basic principle of our legal and common law systems. Under that rule the flood ground in the case study could not have been taken, and the information demands described at response 3.2.1a would need an engineering justification before they could be made. The same principle should reach the planning judgement itself, in three graded steps that add a standard to the person already performing the step rather than a step to the pathway. First, transparency: every assessment report and notice of determination to state the position and planning qualification, or its absence, of the assessing officer and of the delegate who determined the application — a planning-portal standard costing nothing. Second, a minimum standard for delegates: the power to determine a development application to be exercisable only by, or under the direct supervision of, a person holding an accredited planning qualification and a recognised professional certification, with the Planning Institute of Australia's accredited-course list and Registered Planner program recognised and a transitional pathway for serving officers. Third, through the Planning Ministers' Council, a national registration scheme for practising planners on the model of the certifiers Act — accredited qualification, competency assessment, continuing professional development, a code of conduct owing its paramount duty to the objects of the planning legislation, and a disciplinary process — required of anyone determining applications under delegation or giving planning evidence in a court or tribunal. Registration is necessary but not sufficient: the Commission's own proposals at information request 3.4 — tiered assessment, pattern books, pre-certified manufactured housing — reduce the number of decisions that rest on individual judgement at all and should proceed in parallel. Appendix K, section 11.2, states the counter-arguments.

3.1.3 — third-party appeals. Largely beyond our direct experience, and we defer to others on the design of appeal processes. We note one structural fact the balance should weigh: in New South Wales, objector appeals under section 8.8 of the Environmental Planning and Assessment Act 1979 (New South Wales) are confined to designated development, so for the everyday housing this submission concerns, objections operate entirely within the council's discretionary assessment — where they cost nothing to lodge and carry no exposure to costs however unfounded they prove, while every cost of the resulting delay falls on the applicant. Standing, by contrast, is unbounded: any person, anywhere, may make a submission on a notified application, and the consent authority must consider it. From the author's practice: on an inner-Sydney terrace project, an objection was received from a former resident of the street who had moved overseas roughly a decade earlier to Amsterdam in Europe, but continued to follow the street's development from abroad for personal updates; the objection was accepted by Council's planner and entered the assessment and forced design changes to follow. No criticism of the objector or the council is intended — each acted within the system as designed. The point is the system design: the participation franchise reaches a former resident on another continent, while the households who would occupy the homes under assessment have no voice at all (response 3.4.6e). Our fuller response on the incentive structure and the lack of any cost benefit analysis behind this asymmetry is at information request 3.4.6b. Certainty cuts both ways — proponents and communities also benefit when outcomes are predictable from published rules without hidden practices and policies.

Information request 3.2

- *Which specific requirements (for example specific reports or referrals to an agency) are most onerous to comply with when receiving a development approval?*
- *Are there any requirements for development approval that should be removed? In these cases, how should any risks be mitigated?*
- *What could each state and territory do, if anything, to improve the process for receiving subdivision approvals?*

3.2.1a — most onerous requirements. The document schedule at section 4.2 is our answer in full: approximately twenty-five documents across twelve disciplines at lodgement for two modest residential dwellings, growing to the order of fifty submissions through assessment and appeal. Within that, the most disproportionate items for small projects are duplicated expert reporting (separate consultant reports each restating site and general locality facts already before the authority), sustainability documentation produced per dwelling and for various approval stages in near-identical form, and reports commissioned to answer questions the authority's own records already answer — the case-study refusal included a flood ground contradicted by the authority's own flood information certificate.

There is no discrimination in DA submission requirements between a single family residence, a family dual occupancy, a multi-unit residential development (despite that 'multi' may mean only two or two hundred) and a one hundred storey steel glass and concrete tower block. That is a structural chasm in the system. That devolves to the discretion of a council planning officer to assess. That is simply wrong – in my humble opinion.

The other deeper defect is structural: there is no control, review or price anywhere in the system on what an assessing authority may demand of an applicant. Section 36 of the Environmental Planning and Assessment Regulation 2021 (New South Wales) lets a consent authority request additional information without limit; no fee attaches to the request, no body reviews its necessity or proportionality, no metric records it, and the cost of every demand — however marginal its bearing on the decision — lands entirely on the applicant.

Planning assessment has annexed technical disciplines one report class at a time over decades of expanding the role and viability of the planning professions — 'heritage', bushfire risk, hydrology, hydraulics, arboriculture, geotechnics, architectural design, — and each class, once demanded, becomes tomorrow's checklist item.

ANECDOTE: A documented instance from the author's current practice, in the Hornsby local government area: an application to convert an existing dwelling and secondary dwelling into an attached dual occupancy — no material change in form, building area, site areas or roof area — was returned before lodgement with a requirement for, among other things, an on-site stormwater detention design. The requirement is triggered by development type ("two or more dwellings (including dual occupancies)", Hornsby Development Control Plan 2024, Part 1.3.1.2), not by any change in the water leaving the site; the council's design specification for the system is not published, and was not supplied on request. The required certified practising hydraulic engineering outcome was a nominal detention volume credited to rainwater tanks the project was already installing — no physical infrastructure of substance was added — reached at a process cost of approximately $16,800 in hydraulic engineering, re-survey of street outlet levels, plumbing investigation, additional drafting and management time. The same return letter required the proposal to be split into two sequential development applications, the subdivision application lodgeable only after construction is complete and an occupation certificate has issued (clause 4.1D of the Hornsby Local Environmental Plan 2013): and that second DA is not guaranteed and the process is subject to the same massive submission list as the first and to the discretion of another designated planner. A small builder or owner must carry the finance for the entire build for over a year before the titles that would secure that finance can exist.

What makes the detention example worth the Commission's attention is that the engineering literature doubts the requirement delivers any catchment-scale benefit at all. The controls demand that a redeveloped site discharge less at its boundary than it did before development — at former Leichhardt, that the 100-year post-development runoff not exceed the five-year pre-development runoff — although the land area receiving the rain, and hence the volume of stormwater generated once soils reach field capacity, is unchanged. The council's own flood study for that area found *"almost no resulting difference in the peak flows as a result of OSD"* at the catchment outlet (Leichhardt Flood Risk Management Study, Appendix C, 2017), and the peer-reviewed literature reaches the same position (Ronalds and Zhang, 2019; Drumond, Coutinho and Moura, 2020 — the latter observing that the standard design assumptions are not "supported by monitoring data of real OSD performance"). That is despite the hundreds of projects that have been required to undergo the expense of the OSD report and designs and works to gain approvals that don't change the outcome.

A control that costs each small project thousands of dollars, is set out in unpublished specifications, and delivers no measurable catchment-scale reduction in the flood behaviour it exists to manage is this submission's cumulative-burden argument in a single instrument: rules accrete, no body tests whether they buy anything, and no one bears any consequence for demanding them.

Cost benefit analysis ? cost = many millions of $ benefit =0. Rationality = "none"….

3.2.1b — the insurance gateway. The single most onerous requirement of all sits outside the planning file entirely: the insurance gateway. Under Part 6 of the Home Building Act 1989 (New South Wales), no builder may act as principal contractor for residential work of $20,000 or more without insurance under the Home Building Compensation Fund, and no insurance can issue without a Certificate of Eligibility from icare — making eligibility a second, annually-reviewed licence administered by an insurer rather than the licensing authority. Not based on the builder's capabilities or integrity. The mechanics, all from icare's own Eligibility Manual: every certificate carries an Open Job Number and Open Job Value; "builders cannot exceed their OJN… they must complete one job before starting another", and limits are replenished only on notified completion; (This in itself is a cause of anguish for especially small builders with owners stringing out final payments and requesting last minute variations and raising objections to the issue of occupation certification , despite in many cases having already occupied the new dwelling and knowing full well they can't be shut out or the building repossessed or taken away from them, and the builder is under their control at this stage). Growth for a builder's business requires minimum Adjusted Net Tangible Assets of 3% of assumed annual turnover, computed on fire-sale valuations (real estate at 85%, plant at 50%, goodwill at zero), with shortfalls remedied by capital injection, bank guarantees, or Deeds of Indemnity from directors personally — an arrangement the Housing Industry Association describes as "piercing of the corporate veil… needlessly excessive and onerous". There is effectively no appeal: in Introbuild Constructions Pty Ltd v Insurance and Care NSW [2025] NSWSC 773, judicial review of an eligibility decision failed, section 8A(3) of the NSW Self Insurance Corporation Act 2004 (New South Wales) shielding such decisions even from non-compliance with the insurer's own guidelines. A classic case of governmental responsibility privatisation and bureaucratic overreach enacted on the builder with no cost benefit assessment of the schemes at all. The payouts are now strictly limited and most seem to be made to victims of large scale corporate collapses while the ordinary small builder pays the costs.

What the mandatory product actually delivers — under the Home Building Compensation Fund and its counterparts in other states — is the other half of the case. Eighty-seven per cent of claims are triggered by builder insolvency — the scheme is, in operation, builder-failure insurance; the claim rate runs at roughly 0.5 to 1% of policies issued (about 350 claims against 65,000 policies a year on the Independent Pricing and Regulatory Tribunal's 2020 figures; 749 claims against 75,976 policies in 2024–25); the cover cap of $340,000 has not moved since 2012 while building costs have risen 60%; the all-in cost approaches 1.6% of contract price — over $4,000 on an average house — once GST, stamp duty and brokerage load onto the premium; and the fund still required $263 million of Crown grants over five consecutive years. Homeowners hold a product they can almost never claim on; builders carry a capital-and-paperwork gateway on every job; taxpayers subsidise the difference. The Senate Economics References Committee concluded as long ago as 2008 that the product is "not typical of 'insurance' as understood by many consumers"; the regulator's own October 2024 review paper concedes the **eligibility conditions "may limit the number and nature of home building projects that can be**

undertaken by eligible businesses which could impact on the timing and cost of home building work for all… a sensitive issue given the housing supply issues".

The completion-linked limit hands litigiously sophisticated owners a lever the Commission should understand. Because an open job releases eligibility capacity only when notified complete, a contested final payment claim does more than withhold money — it blocks the builder's next start. The formal remedy exists: since 1 March 2021 the owner-occupier exemption from the Building and Construction Industry Security of Payment Act 1999 (New South Wales) has been removed, so a builder may in principle adjudicate a final claim against a homeowner. In practice, a small builder facing a disputed final claim, a frozen open-job slot and a payroll needing payment every week, will often surrender part or all of the final claim to close the job and restore capacity — the eligibility system converts an ordinary payment dispute into an existential pipeline block, and the discount extracted is invisible in any dispute statistic.

The documented pressure valve also confirms the squeeze from the other side: 1,461 penalty notices for failing to insure between January 2018 and June 2023, and a regulator audit finding about half of audited businesses had taken money without insurance in place.

Tasmania abandoned the system after having a good hard look at the onerous compliance requirements, the lack of interested underwriters, the industry and government costs and the lack of benefits of the system.

It's a complex, difficult punishing system.

Why don't our various governments simply just underwrite builder failure as part of the licensing costs, as it seems to pay it out in Crown Grants to support the massive insurers underwriting it in any case and just remove the bureaucratic burden from the industry.

3.2.2a — removal, and mitigating the risks. Yes: for small-scale projects, consolidate expert reporting into a single integrated site report; accept authority-held data (flood, contours, services) in lieu of applicant-commissioned duplication; and pre-certify manufactured dwelling designs at product level so per-project technical documentation collapses to siting and connections. The risk-mitigation instrument we commend is Recommendation 18 of the Building Confidence report (Shergold and Weir, 2018): the Clerk of Works — independent, experienced, trade-qualified site verification, engaged early and present often. Continuous knowledgeable verification on site prevents defects at the point where prevention is cheap, reduces the downstream dispute load now visible in the tribunal statistics (2,741 home building applications in New South Wales in 2023–24), addresses the acknowledged difficulties of the private certification market, and provides a respected late-career role that retains industry knowledge otherwise being lost. Paper controls removed; physical verification strengthened. That is the correct trade.

3.2.2b — the insurance gateway: remove the gateway, keep the protection. The consumer protection should remain; the per-builder underwriting gateway should not. Every design has now been tried in one state: New South Wales ran a government first-resort scheme from 1972, privatised it in 1997, watched HIH collapse holding a third of the market in 2001, switched to last-resort cover in 2002, became monopoly insurer again in 2010, and reopened the market in 2018 — since when not one private insurer has entered. Tasmania, the only state to abolish mandatory cover (2008, on the stated grounds that premiums were high and “claim rates being very low”), has run the natural experiment for eighteen years. With no apparent difference in homeowner outcomes. There is your research. Comparative analysis of the cost benefits of the difference in systems between having it and not having HOW is straightforward and obvious and tested.

We have found from what public data is available that the greatest part of Home Owners Warranty type payouts have gone to underwrite large builder collapses, and often have allowed the company to reconstitute themselves and continue building homes. These are essentially multi million dollar government legislated bailouts of a few big businesses. At the expense of tens of thousands of small scale builders and homeowners.

The Home Building Compensation Fund's exposure is not evenly spread across the industry, and its regulator has been publishing that fact for sixteen years without ever testing what it means. At 30 June 2022, 203 builders — 0.96 per cent of the 21,156 holding eligibility — accounted for $14.1 billion of the scheme's $54.4 billion in eligibility limits, or 25.9 per cent, while the 14,889 smallest builders, 70.4 per cent of the industry, accounted for 25.4 per cent (State Insurance Regulatory Authority, *Home building compensation data tables — June 2022*, Tables 1 and 2). Yet no claims table in that publication, or in any other, is cut by builder size: claims are reported by status, cause, claim type, construction type and policy year, never by the size of the builder whose failure triggered them. Where the question can be tested, the concentration is stark. In Victoria, four collapsed volume builders — Porter Davis Homes Group (which on its own collapse produced 19.6% of all HOW claims in 2023), Snowdon Developments Pty Ltd, Privium Pty Ltd and Langford Jones Homes — generated 3,752 Domestic Building Insurance claims, against 14,342 claims received across the entire scheme in the five years to 2023-24, from a covered population of some 15,000 builders (Victorian Ombudsman, *‘We just want to finish our home’: Management of domestic building insurance claims by the Victorian Managed Insurance Authority*, tabled 3 December 2025, Figure 7; Victorian Managed Insurance Authority, *Annual Report 2023-24*; Victorian Auditor-General's Office, *Domestic Building Insurance*, tabled 14 May 2025). Twenty-six per cent of five years of claims came from four firms. Queensland's insolvency data, which attributes 37.6 per cent of insolvency events between 2014 and 30 June 2018 to self-certifying licensees and 5.3 per cent to the largest revenue categories, appears to contradict this but does not: it counts events, not consequences, treating a collapse that leaves four hundred unfinished homes and one that leaves a single home as one event each (Queensland Building and Construction Commission, *Insolvency Breakdown by Year and Financial Category*, released under the Right to Information Act 2009 (Queensland), reference RTI_220_18_19, 25 January 2019). New South Wales cannot say whether the same concentration exists in its own scheme, because it has chosen not to publish the one table that would show it.

We therefore propose:

First, replace per-builder eligibility underwriting with broad-based, government-backed, industry-wide cover funded by a flat premium or levy at scale — protection attaching to each and every dwelling, not to an insurer’s annual opinion of the builder’s balance sheet;

Second, return competence and conduct assessment to the licensing authority, where the Building Commission New South Wales now exists to do exactly that work, so that a licensed builder's capacity to take on available work is bounded by their licence and their record, not by bureaucratic caps administered without merits review; and the same for new builders entering the industry. Let their training and capabilities be their opportunity to start their own business and build more houses. Not capped by the prohibitive requirements of HOW insurance eligibility and an underwriter's limitations on their total value of works permitted per annum to about one third of a typical house construction cost, making a living and supporting their families pretty much impossible for young builders. It just hasn't worked.

Third, pending complete structural reform, three immediate repairs — exclude not-yet-commenced and completed-but-disputed jobs from open-job limits (the Housing Industry Association's proposal), index the $340,000 cap frozen since 2012, and provide merits review of eligibility decisions. The risk mitigation is the same as for 3.2.2a above: the Clerk of Works model of the Building Confidence report — defects prevented on site, rather than litigated at the point of builder failure — is worth more to homeowners than an insurance product that pays one policyholder in a hundred, and costs less than the scheme's administrative and brokerage load.

3.2.3 — subdivision.

ANECDOTE: A good friend's long term project is to subdivide the family farm in western Sydney. The owners are getting too old to run the farm and the children have gone off on other careers and aren't farmers and won't ever be farmers, and the market value of the farm, even as a single large title, makes its purchase as a functioning farm prohibitive. It can, even when well run with modern systems and technologies providing premium agricultural product to a nearby hungry market , return less than 0.5% of its assessed market value per annum - at a minimum interest cost of 6.8% commercial loan, no one invests at a return of minus 6.3%. And the adjacent properties have all subdivided and turned into suburbs over the decades. But council has refused the subdivision application not once but three times, and for the latest application has required a further $250,000 application fee on top of the already paid previous DA fees, as the potential subdivided property value has significantly increased since the last application. Will council actually expend a quarter of a million dollars in staff costs to re-assess the DA? Is that rational or fair ? or productive in addressing the country's crisis ? And the design, redesign and re-redesign costs and associated reports have run into six figures and may push close to seven before the DA can be achieved. And the elderly owners are financially and emotionally exhausted. In the middle of a National Housing Crisis. So that's a thousand new houses that aren't getting built this year or next. The attitude of planners towards people gaining financial freedom from development earnings on their own properties, regardless of societal benefits of that development, is astounding in this country.

Information request 3.3

- *Is improving the coordination of the approvals process a higher or lower priority than reforms to reduce the amount of approval requirements?*
- *Are there any examples of where coordination bodies are or are not working? What are the features of coordination bodies which make them successful?*

- *How effectively are reforms to planning rules, such as SA's Planning and Design Code and Victoria's Clause 55, working to make approvals more certain?*

3.3.1 — coordination versus reduction. For small projects they are not alternatives: reduction determines how much must be carried, coordination determines who carries it. Reduction is the higher long-term priority — a burden removed needs no coordinating — but coordination delivers relief to larger projects faster, because it requires administrative change rather than legislative change. What would we say as residential builders? Do both; sequence coordination first and legislate hard and accurately based on decades of sound research and inquiry findings.

3.3.2 — coordination bodies and their features. For the affordable end of the market we propose a state-level delivery authority — in our working papers, an Affordable Housing Authority — that acts as the project's single integrator: it holds the relationship with every consent and referral authority, obtains approvals, arranges warranty insurance and statutory compliance, lets a simple fixed-scope building contract, authorises progress payments, and delivers the completed dwelling to the purchaser. The builder builds; the authority carries the desk. This is not an additional layer of regulation — it is the relocation of an administrative load that already exists, from the party least equipped to carry it (a two-person building business) to a party purpose-built for it. The features that make coordination bodies succeed, in our assessment: a named case manager per project; authority that spans agencies rather than requests to them; standard-form contracts; payment certainty for the builder; and public reporting of end-to-end elapsed time per project, so the body is accountable for the whole clock, not a segment of it.

3.3.3 — South Australian and Victorian reforms. These state based reforms are outside our direct experience; we defer to participants in those jurisdictions.

We would say though that we gave up our Victorian building licence after ten years in 2025 as the structural conflict between the new stringent Bushfire Risk management strategies and environmental protection strategies and simply the cost of building compliance for anything outside of standard traditional building practices had become astronomical. Performance solutions for manufactured prefabricated buildings in Victoria's construction certification regulations require testing and individual certification of each and every building element that is not specifically listed and described in the Victorian edition of the national BCA. It can cost upwards of $50K for each of those tests and certifications and they could be required for each and every customised copper nail, aluminium screw, alloy beam, carbon fibre bolt and waffle truss in the building, if the certifier so demanded.

If ever there was a disincentive to innovation and new technologies the Building Certifier Professional Indemnity insurance underwriting policies is it in a nutshell.

Information request 3.4

- *What examples are there of best-practice strategic planning improving the process for housing approval decisions at a state, territory or local government level?*
- *Do the features of tiered assessments we have identified match best-practice? What sort of developments should be included in each tier?*
- *How effective has technology including AI been where it has been used to assist with approvals? How can it be better utilised?*

- *What are the best ways to enhance how states and territories track the timing and burden of approvals?*
- *What reforms should each state and territory prioritise to reduce the burden of the approvals process?*
- *How can federal, state and territory governments incentivise councils to approve developments efficiently, and encourage those that are slow or are obstructing approval pathways?*
- *What evidence is there about the benefits of including social and affordable housing in state-significant, or other streamlined, pathways?*

3.4.1 — strategic planning examples. We defer on strategic planning to others, with one observation: strategic planning helps only when the promise it makes at rezoning survives to determination. In our direct recent experience these are not working due to almost every council's planning pushback. It would be a useful bit of research to delve into whether it is councillors or planning committees or planning departments who are agitating for the broadening of planning control by local councils.

In our recent experience a proposal for two modest two-storey terrace houses on adjacent titles inside a designated strategic growth area for higher density housing with broad publicly stated council support for infill housing and laneway secondary dwelling development that is then refused on twenty grounds (section 4.2) has had its strategic planning offer cancelled at the counter.

So it would be useful to know whether there is a disengagement between well meaning, rational, issue driven strategic planning resolutions at state and political level and what local councils or their planners will actually agree to let get built in their dominions.

3.4.2 — tiered assessment. The tiering direction is right and we support it. The tiers should be set by scale and risk, not by postcode, land value or applicant type: single dwellings, dual occupancies, secondary dwellings and small infill up to (say) four dwellings belong in a code-assessed or pattern-book tier with binding pre-lodgement advice and preferably without engaging with council planning assessment processes; pre-certified manufactured dwelling designs belong in the fastest tier of all, because their compliance has already been assessed at product level and only siting, foundations and connections remain site-specific. The removal of technical compliance analysis such as flood, stormwater management, geotechnical, energy efficiency, and bushfire construction issues from unqualified planning level assessment is critical to ensuring planning pathways can be simplified, not complexified. All these issues are firmly and rationally dealt with at construction certification level with appropriately qualified and experienced assessors, extensive structural codes detailing requirements and no subjective assessments needed.

3.4.3 — artificial intelligence, answered from practice. This submission itself is the evidence. The document you are reading, and the project records behind its case study — file notes, formal information-access applications, expert briefs, flood report addenda, document schedules — were produced by the author directing an artificial intelligence assistant to find, gather and grind through the mountains of siloed data. Data provides information when it can be accessed – that information needs to be interpreted in expert ways to filter, summarise, compact and interpret it to give advice to inform high level human decision making with all its foibles. Work that consumes a practitioner's evenings for weeks and months was compressed into days.

Two conclusions follow, and their order matters.

First, that this work can be done by a machine is evidence of what it is: process, not judgment. It requires no wisdom about buildings — only reading, cross-referencing, online form-filling and sequence-keeping. A demand that can be fully satisfied by a machine cannot be defended as a filter for competence or safety; it is simply load. Safety documentation is one of the clearest cases: the Safe Work Method Statement (the ubiquitous daily SWMS) was conceived as a short, site-specific risk conversation and has become a multi-page multi binder set of detailed complex instruments, produced per builder, per trade, per site and per worker, by the tens of thousands, held for inspection if ever needed rather than lodged, and drafted in practice to survive scrutiny after an incident — the safety-science literature calls this "safety clutter" (section 2.3).

Second, the answer is therefore not to automate the existing burden — which would preserve every page of it — but to simplify first and automate the remainder.

Or Thirdly and better still use the power of the AI revolution to simplify the system, identify crossovers and duplications in all the various acts, regulations and policy driven procedures, bring them all into one coherent searchable document that the AIs can use as their project briefings for all proposals to reduce the required list of compliances to the most simplified, shortest form. And use that for a complying development analysis – completely replacing the irrational, unpredictable vagaries of human planners and the nervous, risk-averse, self-protective actions of a building certifier profession driven by its professional indemnity insurers.

We have at hand the opportunity to move into the fully digital world with direct to hand held device or AR information and advice and competency response requirements for each DA site and worker in each construction site and situation which the AI can see, research and compare to precedents and understand in milliseconds and set up the necessary device warnings and hold points.

The industry's workforce is, rightly, people whose gifts are physical: knowledgeable, trained, dexterous and with sufficient strength and adaptability, capable in rain, sun, mud and dust, able to get things done on real sites.

The regulatory system should be redesigned so that it can be satisfied by that workforce, assisted by tools of this kind — not calibrated to a bureaucratic desk-fluency most of the industry does not possess and should not need and is in reality a distraction from their core skills and productivity capacity.

3.4.4 — tracking timing and burden. The league tables are a genuine advance; and they could be even more useful to the productivity issues. They could be extended in both directions. Using AI we could track the whole clock — from pre-lodgement to occupation certificate, including appeals and refusals and redesigns of the given project, and all variations needed to finish the works, and legal actions across all authorities, not the council assessment segment alone. And track determination practices, not just times: report how often each authority offers an amendment pathway before refusing a small application, and how often it issues withdraw-or-determine correspondence of the kind documented at section 4.2 — and how often refusal is recommended with express reference to meeting assessment timeframes, of which section 4.2 now records a documented instance. And how much lost time and at what cost planning appeals add to how many projects. Two further metrics cost little. Consistency: whether like applications within one council, under the same controls and the same delegate, received like answers within a year. And the destination of refusals: distinguishing a refusal that ends a proposal from one that moves it, redesigned, to a section 34 conciliation conference or a hearing — the second is a transfer of assessment work to a more expensive forum, not a completion.

3.4.5 — priorities. In order:

- A new attitude within planning and councils as their role is to facilitate high quality development (not to police architects and designers and be the arbiters of 'good design')
- A new attitude within the building inspection profession as its role is to facilitate high quality development (not to police designers and builders)
- proportionate tiers with appropriate processes for small-scale housing;
- a single integrated site report replacing duplicated expert reports;
- correct classification and modernisation of the approval pathway for permanent manufactured homes;
- binding pre-lodgement advice; and
- coordination bodies for the affordable segment (information request 3.3.2).

3.4.6a — incentives for councils. Publish the extended metrics above; tie a share of assessment-related funding to them; and give small applicants an automatic no-cost internal review where determination occurred without an amendment pathway being offered. Cut out the bad side effects that are emerging from the league tables and some councils trying to raise their bars without improving their handling of applications. Sunlight on practices, and responsibility for poor handling by bureaucrats, not just on days and corresponding internal KPIs, changes behaviour. Current processes are hidden in the shadows, behind closed doors, mired in bureaucratic red tape and access to the internal workings of planning departments is vigorously opposed and typically only available through GIPA and Freedom of Information legal pathways. One sunlight measure is already half-legislated. Schedule 1, clause 20 of the Environmental Planning and Assessment Act 1979 (New South Wales) requires public notification of the reasons for every determination of a development application, approvals included — but clause 20(3) lets the requirement be met by reference to any document that contains the reasons, and section 88 of the Environmental Planning and Assessment Regulation 2021 (New South Wales) requires the notice of determination itself to carry reasons only for a refusal and for conditions. In practice a delegated approval that turns on discretion — a clause 4.6 variation, a heritage conservation area finding, a laneway character judgement, the applicability of a contribution — is recorded in an assessment table as "Yes", while a refusal carries twenty numbered grounds. The favourable exercise of discretion is therefore never explained, never available as a benchmark to the next applicant, and never open to the consistency check proposed at 3.4.4. Discretionary approvals should carry reasons of the same standard as refusals, published with the determination.

ANECDOTE: In my personal experience it is almost impossible to speak directly with a planner anymore. All lodgements are done online in NSW through the electronic NSW Planning Portal. Most planning counters have closed up as far as I can find. Planners don't issue their telephone numbers, especially when they have taken a set against a project. An email is the best that we can usually expect. Presumably planners don't want to have face to face or telephone discussions as they have had to bear the brunt of disgruntled applicants entrapped in a system they believe is unfair, irrational and unnecessarily costly. My hand goes up for that. In a recent DA refusal the designated planner outright refused any negotiation on the proposal, based on our alleged failure to address the pre-lodgement advice given, despite acknowledging that the pre-lodgement advice was based on an incorrect assumption of the nature of the application and the sites. And after refusing the application the designated planner refused to send us any of the internal referrals they had requested. Weeks of unnecessary actions and delays were required to follow this up to obtain those referrals and their responses and the planners internal communications through the GIPA process through the council's archives office. Again to find that the planner had mishandled the internal referrals process and made personal incorrect assumptions on issues outside their expertise to state as refusal reasons.

3.4.6b — before designing new incentives, do the proper required research and analysis, account for the ones already in place. The Commission asks how governments can incentivise councils to approve developments efficiently, and encourage those that are slow or are obstructing approval pathways to improve. Our answer begins with an observation from forty years of dealing with consent authorities: councils already respond, quite rationally, to four standing incentives (council revenue setting, legal costs attribution, electoral retribution fears, error registering [bureaucrat's fear of loss]) , — and every one of them currently rewards refusal or delay. New incentives layered over these will fail the way successive state overrides of local controls have failed (information request 2.1.5): the behaviour migrates to whichever layer the incentive does not reach. The durable reform is to repair the underlying ledgers.

3.4.6c — The revenue ledger. Since 1977, New South Wales councils' general rate income has been capped under rate pegging — set by the Minister for Local Government until 2010–11 and by the Independent Pricing and Regulatory Tribunal since 2011–12 under the Local Government Act 1993 (New South Wales). Until 2022–23 the peg contained no population component: every new dwelling a council approved brought new residents requiring services, while the council's aggregate rate income remained capped regardless. For forty-five years, the approving council purchased a net fiscal cost. This is not our theory; it is the State's own finding. The New South Wales Productivity Commissioner's Review of Infrastructure Contributions in New South Wales (Final Report, November 2020) found that rate pegging "has resulted in declining per capita revenue for high growth councils and is a disincentive for councils to accept development", recorded New South Wales average rates per capita of $591 in 2019 against $835 for the other states combined, and made its Recommendation 3.1 accordingly: "Subject to review by the Independent Pricing and Regulatory Tribunal, reform the local government rate peg to allow councils' general income to increase with population." A population factor was duly introduced from 2022–23, and the Commission's interim report itself acknowledges (p. 95) that in New South Wales and Victoria rate pegging and capping "can act as a disincentive to councils in higher-growth areas from accepting additional development". But a fiscal architecture that spent forty-five years teaching councils that development is a cost is not unlearned by a three-year-old adjustment operating at the margin of a still-capped system. The organisational cultures, development control plans and engineering standards built up over those decades — documented at sections 2.2 and 4.3 and at information request 2.1 — remain in place.

3.4.6d — The legal-cost ledger. An objection to a development application costs nothing to lodge: no fee, no evidence threshold, no exposure to costs however unfounded it proves. Refusal costs the council very little more. In Class 1 merit appeals before the Land and Environment Court of New South Wales, rule 3.7 of the Land and Environment Court Rules 2007 (New South Wales) provides that costs are not to be ordered unless the Court considers it fair and reasonable in the circumstances — so each party ordinarily bears its own costs, and a council that refuses a compliant application and loses comprehensively on appeal ordinarily pays none of the applicant's costs. Delay is cheaper still: the applicant's only remedy is to commence a deemed-refusal appeal at the applicant's own expense — to buy their way out of the queue. Objectors to everyday housing, for their part, have no appeal rights at all — objector appeals under section 8.8 of the Environmental Planning and Assessment Act 1979 (New South Wales) are confined to designated development — so their entire influence operates inside the council's discretionary assessment, which is precisely where these ledgers do their work. Every cost in the system sits with the applicant; none sits with the objector; almost none sits with the assessing authority.

3.4.6e — The electoral ledger. The residents who make submissions against a proposal are present, concentrated and enrolled in the deciding council's area. The households who would occupy the homes being refused are none of these things: they are dispersed across the metropolitan housing market and, for dwellings not yet built, not yet identifiable at all. A council that weighs twenty submissions against no countervailing voice is not misreading its community; it is reading, accurately, a franchise from which the beneficiaries of new housing are structurally absent. The time dimension compounds it. The author named this structure in 1999, in an unpublished manuscript on sustainable building: "A perverted notion of responsibility exists in our bureaucracies, a NIMTOF (not in my term of office)… the current time horizons are set by the assumption that things must be good by election time." The costs of refusing housing arrive years after any councillor's term ends; the objections arrive before the next election.

3.4.6f — The officer ledger. The interim report's own diagnosis applies with particular force at assessment level: regulators "have strong incentives to be risk averse, to undervalue the burden placed on businesses (since they do not bear the burden of their decisions)" (interim report, p. 23). An approval that later goes wrong carries the assessing officer's name indefinitely; a refusal, a further request for information, or another month on the clock carries no personal consequence for anyone. Career risk attaches only to "yes". No integrity failing need be assumed anywhere in this analysis — that is its point. Each actor responds reasonably to the ledger in front of them, and the sum of those reasonable responses is the league-table spread at section 4.3. One further effect follows, offered as the author's observation from practice rather than as measured fact: where the ledger rewards the application that looks as though it will land, the form of the documents and the familiarity of their author come to matter more than the content of the proposal. That is a barrier to entry for new practices and small applicants, and a premium to established ones, of exactly the kind the Commission's terms of reference are concerned with. The remedy is not to punish fluency; it is to make the council's own reasoning explicit enough that fluency stops being the price of admission.

3.4.6g — What follows for incentive design. Incentives that will work are those that repair a ledger rather than exhort against it. First, complete the revenue repair: make the population factor permanent and material, so that a council's general income genuinely grows with the dwellings it approves — finishing what Recommendation 3.1 of the 2020 review began — and test the interim report's recorded suggestion (p. 114) of weighting Australian Government Financial Assistance Grants toward councils that meet housing targets. Second, put a modest price on unreasonable refusal: a rebuttable costs presumption in Class 1 appeals where a refusal is overturned and the council's position is found to have had no reasonable prospect — leaving genuine merit disputes untouched while ending the free option on "no". Third, the sunlight measures at 3.4.4 and 3.4.6a above, which convert reputation — the one ledger currently unpriced — into a working incentive. The author put the underlying principle on paper in 1999: impacts should be borne "within the… community benefiting from the actions causing the impacts". A refusal fails that test as surely as any pipeline — it keeps the amenity benefit inside the council boundary and exports the cost, in scarcity and sprawl, to everyone outside it.

3.4.7 — streamlined pathways for social and affordable housing. We support streamlining and note the machinery already exists in the state-significant pathway; the gap is at the small end, where affordable homes are delivered one and two at a time by the businesses and owners least able to carry the process (sections 2.2 and 3) and producing the lion's share of these buildings.

Information request 5.1

- *Which of the reform directions will be relatively easy or hard to implement and why? Are there any examples of 'quick wins' that could be achieved?*
- *Are there any co-dependencies or sequencing considerations across the reform directions?*
- *How can the Australian Government ensure housing regulatory system reform is implemented in a manner that supports all governments' commitments under the National Agreement on Closing the Gap?*
- *How can the Australian Government best support state and territory and local governments to shift housing regulatory systems towards best practice?*

5.1.1 — quick wins. Four are available immediately, none requiring legislation:

correct the classification and application of the section 68 (Local Government Act 1993 (New South Wales)) pathway for permanent prefabricated dwellings — an administrative instruction;

require that an amendment pathway be offered before any first small-scale application is determined by refusal;

require bureaucracies use the discretion capabilities to assist small developments to provide needed housing and accept authority-held site data in lieu of applicant-commissioned duplication; and

adopt the direction of the draft Statewide Community Participation Plan (April 2026) for compliant small-scale housing, resolving its heritage-conservation-area ambiguity (response 3.1.1).

5.1.2 — sequencing. Two orderings matter.

Simplify before automating: technology applied to the current stack will embalm it.

And

Coordinate before, or alongside, reducing: coordination delivers relief on administrative timelines while legislative reduction proceeds on parliamentary ones (information request 3.3.1).

5.1.3 — Closing the Gap. This is simply beyond our evidence base; we respectfully defer to Aboriginal and Torres Strait Islander organisations, noting only that remote and off-grid delivery — where our pod systems have operated for two decades — is disproportionately punished by process burdens designed for suburban contexts. And there isn't a rule book for outback construction for indigenous cultural appropriateness. Despite the work done by dedicated architects in the deserts. Indigenous cultures require a different building pattern language. Robustness, openness, collective and apart spaces, shelter and shade are all essential but different requirements to those set out in the NCC. Glenn Murcutt's and

Paul Pholeros' and Troppo's work pioneered this understanding in mainstream Australia decades ago but has been lost — again.

But the testing and review in this area is at least a positive way of showing how little is being achieved despite the resources and goodwill being applied. The current Aboriginal housing initiative, building 2,700 new houses for $4 billion over ten years, is a case in point — that is nearly $1.5 million per house and only 270 a year. Perhaps some experimentation with alternative solutions and some research and testing what works is called for in some ARC PhD candidates.

5.1.4 — Australian Government support. Commission and maintain a standing cumulative-burden account of housing regulation — the whole wall, kept current, published — so that every jurisdiction's reform is measured against the load as experienced rather than the instrument amended; support national consistency in definitions and certification for manufactured housing (the Australian Building Codes Board scheme); and fund the extended tracking metrics of information request 3.4.4. It should also complete the Budget 2026–27 free-access-to-standards commitment ($42.7 million over four years) in a form the industry can actually use: access that permits reproduction of the relevant tables into project documentation, with secondary referenced standards within scope.

4. Conclusion

At either end of figure 1, right at the beginning of this manifesto, stand the only two elements that matter: the people, with their ambitions and deposit, and the building, the home they need. Everything between them is legitimate only to the extent that it allows, no, it promotes one to get to the other.

Much of it does; the accumulated whole plainly does not, and no authoritative body currently sees the whole. We ask the Commission to recommend that governments look at the wall of bureaucracy the way a builder has to — all at once — and then take down every brick that cannot justify its place. Relax what need not be regulated; simplify what must be; coordinate what remains through bodies built for coordination; certify manufactured housing at the product level; verify on site through people who have built; and let machines carry whatever paperwork survives. The builders this country needs are standing in the rain and mud and sun and dust getting houses built. The system should require nothing of them that cannot be done with their hands, abilities and training.

References

References are numbered for citation. Each entry ends with the Part One sections and Part Two numbered responses where it is cited.

1. Productivity Commission (2026), Housing Supply Regulation — Interim Report, 27 July 2026. https://www.pc.gov.au/inquiries-and-research/housing-supply/interim — Cited at: sections 1, 2.3 and 5; request texts quoted throughout Part Two; interim report pages 23, 95 and 114 at responses 3.4.6f, 3.4.6c and 3.4.6g. Interim report pinpoints used in section 8: page 16 (reform direction 2.5); page 36 (best-practice table; box 1.3, Auckland Unitary Plan case study); page 50 (box 2.2, "The costs of heritage protection are not well evaluated against the benefits").

2. Productivity Commission (2025), Housing construction productivity: Can we fix it? Research paper. https://www.pc.gov.au/inquiries-and-research/housing-construction/ — Cited at: section 2.3.

3. Australian Securities and Investments Commission (2024), Annual insolvency data reveals increase in companies failing, 25 July 2024. https://www.asic.gov.au/about-asic/news-centre/news-items/annual-asic-insolvency-data-reveals-increase-in-companies-failing/ — Cited at: section 3.

4. New South Wales Civil and Administrative Tribunal (2024), Annual Report 2023–2024. https://ncat.nsw.gov.au/documents/reports/ncat-annual-report-2023-2024.pdf — Cited at: section 3; response 3.2.2a.

5. PropCode (2024), NSW DCP League Table, 5 September 2024. https://propcode.com.au/news/nsw-dcp-league-table — Cited at: section 2.3; response 1.2.3.

6. New South Wales Department of Planning (2026), Statement of Expectations Order and council league tables. https://www.planning.nsw.gov.au/the-planning-system/housing/faster-assessments-program/statement-of-expectations-order — Cited at: section 4.3; response 3.4.4.

7. Shergold, P. and Weir, B. (2018), Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia. — Cited at: section 6; responses 3.2.2a and 3.2.2b.

8. Australian Building Codes Board (2025), National voluntary certification scheme for manufacturers of modern methods of construction — as cited in the interim report. — Cited at: section 2.3; responses 2.1.3 and 2.1.4, and 5.1.4.

9. Building (Approvals and Practitioners) Bill 2026 (New South Wales) — as cited in the interim report. — Cited at: section 2.3.

10. Australian Government Department of Industry, Science and Resources, Australia's standards and conformance infrastructure — an essential foundation (catalogue of approximately 7,519 Australian Standards). https://www.industry.gov.au/publications/australias-standards-and-conformance-infrastructure-essential-foundation/do-all-products-have-meet-australian-standards — Cited at: section 2.3.

11. Master Builders Australia (2026), Modernising the National Construction Code — submission to the Australian Government Treasury, 27 February 2026 (standards referenced in the National Construction Code; access costs). https://masterbuilders.com.au/wp-content/uploads/2026/03/NCC-Submission-2026.pdf — Cited at: section 2.3.

12. Engineers Australia (2026), Streamlining and Modernising the National Construction Code — submission to the Australian Government Treasury, February 2026 (176 primary referenced documents in the National Construction Code 2025 preview; Productivity Commission figures on standards in legislation). https://www.engineersaustralia.org.au/sites/default/files/2026-02/Engineers%20Australia%20NCC%20Treasury%20Feb%202026.pdf — Cited at: section 2.3.

13. Australian Government (2026), Budget 2026–27 — free public access to standards referenced in legislation ($42.7 million over four years, grants to Standards Australia), as reported by the Association of Consulting Architects Australia and the Design Institute of Australia, May 2026. https://aca.org.au/australian-standards-win/ — Cited at: section 2.3; response 5.1.4.

14. Intertek Inform, NCC Primary References Set — product listing (362 documents; the commercial source from which the author's standards list was reconstructed). https://www.intertekinform.com/en-au/small-business-sets/ncc-primary-references-set/ — Cited at: section 2.3.

15. Safe Work Australia, model work health and safety laws — legislation and regulators by jurisdiction; high risk construction work requiring a safe work method statement. https://www.safeworkaustralia.gov.au/law-and-regulation/legislation and https://www.safeworkaustralia.gov.au/duties-tool/construction/hazards-information/high-risk-construction-work-requiring-swms — Cited at: section 2.3.

16. SafeWork NSW, Notify SafeWork — notification categories and timeframes (incidents, asbestos removal, demolition, lead, legacy engineered stone, explosives). https://www.safework.nsw.gov.au/notify-safework — Cited at: section 2.3.

17. Housing Industry Association (2026), Small builders, big contribution — small business survey findings, April 2026 (regulatory hours per week). https://hia.com.au/our-industry/housing/in-focus/2026/04/small-builders-big-contribution — Cited at: section 2.3.

18. Safety Science (2021), "Factors that influence the effective use of safe work method statements for high-risk construction work in Australia — a literature review", vol. 145.

https://www.sciencedirect.com/science/article/abs/pii/S0925753521004689 — Cited at: section 2.3; response 3.4.3.

19. Queensland Government, Department of Housing, Local Government, Planning and Public Works — Changes to secondary dwellings (occupancy restrictions removed 26 September 2022). https://www.planning.qld.gov.au/planning-issues-and-interests/changes-to-secondary-dwellings — Cited at: responses 2.1.3 and 2.1.4.

20. NSW Civil and Administrative Tribunal (2025), Annual Report 2024-2025 (home building list lodgements and finalisations). https://ncat.nsw.gov.au/content/dam/dcj/ctsd/ncat/documents/reports/ncat-annual-report-2024-2025.pdf — Cited at: section 3.

21. Victorian Auditor-General's Office, Domestic Building Oversight Part 2: Dispute Resolution (dispute incidence survey; Domestic Building Dispute Resolution Victoria and Victorian Civil and Administrative Tribunal caseloads; permits denominator). https://www.audit.vic.gov.au/report/domestic-building-oversight-part-2-dispute-resolution — Cited at: section 3.

22. Queensland Building and Construction Commission (2025), Annual Report 2024-25 (defective building work complaints; directions to rectify). https://www.qbcc.qld.gov.au/sites/default/files/documents/corporate-qbcc-ar-24-25-annual-report.pdf — Cited at: section 3.

23. Land and Environment Court of New South Wales (2025), Annual Review 2024 (Class 1 registrations; development appeal and deemed-refusal proportions). https://lec.nsw.gov.au/documents/annual-review/LEC_Annual_Review_2024.pdf — Cited at: section 4.3; response 3.1.1.

24. Productivity Commission (2006), Conservation of Australia's Historic Heritage Places, Inquiry Report No. 37, 6 April 2006. https://assets.pc.gov.au/inquiries/completed/heritage/report/heritage.pdf — and the Australian Government Response. https://www.pc.gov.au/inquiries-and-research/heritage/government-response/ — Cited at: responses 2.3.1, 2.3.2 and 2.3.3. Section 8 additionally relies on page XVIII ("often ineffective, inefficient and unfair") and appendix C (Parramatta hedonic study).

25. New South Wales Productivity and Equality Commission (2024), What we gain by building more homes in the right places, February 2024 (heritage coverage figures, pp. 41–42); and Review of housing supply challenges and policy options for New South Wales, November 2024 (exempt and complying development exclusions). — Cited at: response 2.3.1. Section 8 additionally relies on pages 41–42 (approximately 25% of residential land within 10 km of the Sydney central business district heritage-protected, about 20 percentage points as heritage conservation area; 50–85% in North Sydney, Newtown, Edgecliff and Redfern).

26. Allen Consulting Group (2005), Valuing the Priceless: The Value of Historic Heritage in Australia, Research Report 2 for the Heritage Chairs and Officials of Australia and New Zealand, November 2005. — Cited at: response 2.3.2.

27. SGS Economics and Planning (2018), The Value of Heritage: Summary Report, for the Heritage Council of Victoria, January 2018. — Cited at: response 2.3.2.

28. Department of Planning and Environment (New South Wales) (2023), Assessing Heritage Significance: Guidelines for assessing places and objects against the Heritage Council of NSW criteria; and Guidelines for Preparing a Statement of Heritage Impact, February 2023. — Cited at: response 2.3.2. The seven significance criteria were gazetted under section 4A(3) of the Heritage Act 1977 (New South Wales) rather than enacted in it, and carry no quantitative standard; author qualifications are "recommended" only.

29. Spennemann, D.H.R. (2023), "What Actually Is a Heritage Conservation Area?", Heritage, vol. 6 no. 7, article 279. https://www.mdpi.com/2571-9408/6/7/279 — Cited at: background source; not directly cited in the text. Quoted in section 8: "'Character' is not defined as a term in the various heritage acts, local development plans or in the development control plans"; "none of the official publications issued by the New South Wales state heritage authorities provide a definition of the purpose of heritage conservation areas."

30. Tulip, P. (2026), Reform of Heritage Legislation, Centre for Independent Studies Policy Paper 62, February 2026; and Spiller, M. and Lesh, J. (2026), The economics of heritage laws and housing supply, May 2026 (contrary analysis, cited for balance). — Cited at: listed for balance; not directly cited in the text.

31. Commonwealth v Tasmania (1983) 158 CLR 1 (High Court of Australia). — Cited at: response 2.3.2.

32. State Insurance Regulatory Authority (2024), Review of the Home Building Compensation Fund — Supporting Information, October 2024 (claim triggers; cover caps; eligibility and housing-supply concession; scheme history). — Cited at: response 3.2.1b.

33. icare (2026), HBCF Eligibility Manual, version 4.4 (open job limits; adjusted net tangible assets; deeds of indemnity). https://www.icare.nsw.gov.au/builders-and-homeowners/builders-and-distributors/eligibility — Cited at: response 3.2.1b.

34. Independent Pricing and Regulatory Tribunal (2020), Efficiency and Effectiveness of the NSW Home Building Compensation Fund — Final Report, December 2020, and Fact Sheet, April 2020 (claim rates; deficit; premium comparisons). — Cited at: response 3.2.1b.

35. Senate Economics References Committee (2008), Australia's Mandatory Last Resort Home Warranty Insurance Scheme, November 2008; and Grellman, R. (2003), NSW Home Warranty Insurance Inquiry — Final Report, 30 September 2003 (scheme history from 1972). — Cited at: responses 3.2.1b and 3.2.2b.

36. Housing Industry Association (2024), Submission to the SIRA Review of the Home Building Compensation Scheme, 22 November 2024. — Cited at: responses 3.2.1b and 3.2.2b.

37. Department of Justice (Tasmania) (2022), Home Warranty Insurance — Consultation Paper 2, May 2022 (Tasmanian scheme history and 2008 abolition). — Cited at: response 3.2.2b.

38. Introbuild Constructions Pty Ltd v Insurance and Care NSW [2025] NSWSC 773 (Supreme Court of New South Wales). — Cited at: response 3.2.1b.

39. New South Wales Productivity Commissioner (2020), Review of Infrastructure Contributions in New South Wales — Final Report, November 2020 (Recommendation 3.1; Chapter 3 findings on rate pegging). https://www.productivity.nsw.gov.au/sites/default/files/2024-06/Final-Infrastructure-Contributions-Review-Report.pdf — Cited at: responses 3.4.6c and 3.4.6g.

40. Independent Pricing and Regulatory Tribunal (New South Wales), Local Government — Frequently Asked Questions (rate pegging since 1977; population factor from 2022–23). https://www.ipart.nsw.gov.au/Home/About-IPART/FAQs/Local-Government — Cited at: response 3.4.6c.

41. Land and Environment Court Rules 2007 (New South Wales), rule 3.7 (costs in Class 1 proceedings). — Cited at: response 3.4.6d.

42. Land and Environment Court of New South Wales, Development application appeals — court guidance (objector appeals under section 8.8 confined to designated development). https://lec.nsw.gov.au/types-of-cases/class-1---environmental-planning-and-protection-appeals/development-application-appeals.html — Cited at: responses 3.1.3 and 3.4.6d.

43. Sainsbury, S. (1999), A Book for Living Sustainably, unpublished manuscript, September–October 1999 (author's archive; excerpts in project References). — Cited at: responses 3.4.6e and 3.4.6g.

44. City of Sydney (2025), Community Engagement Strategy and Community Participation Plan 2025–2029, published 2 July 2025 (appendix D land use planning consultation matrix: exhibition periods and 25/50/75 metre notification buffers by development application category). https://www.cityofsydney.nsw.gov.au/development-guidelines-policies/community-participation-plan — Cited at: section 4.2; responses 2.3.1 and 3.1.1.

45. NSW Department of Planning, Housing and Infrastructure (2026), Draft Statewide Community Participation Plan and Discussion Paper, on public exhibition April 2026 (proposed single statewide plan; Table 6 development exempt from public exhibition and notification). https://www.planningportal.nsw.gov.au/draftplans/exhibition/have-your-say-proposed-statewide-community-participation-plan — Cited at: responses 3.1.1 and 5.1.1.

46. Cook, N., Taylor, E., Hurley, J. and Colic-Peisker, V. (2012), Resident third party objections and appeals against planning applications: implications for higher density and social housing, Australian Housing and Urban Research Institute Final Report No. 197 (15,676 Melbourne applications 2009–10: 26% received objections; median 2; objection volumes track suburb socio-economic advantage). https://www.ahuri.edu.au/research/final-reports/197 — Cited at: response 3.1.1.

47. Taylor, E., Cook, N. and Hurley, J. (2016), "Do objections count? Estimating the influence of residents on housing development assessment in Melbourne", Urban Policy and Research, vol. 34 no. 3, pp. 269–283 (objection counts drive elected-councillor intervention; councillor determinations carry seven-fold higher odds of appeal). https://doi.org/10.1080/08111146.2015.1081845 — Cited at: response 3.1.1.

48. Inner West Council (2017), Leichhardt Flood Risk Management Study, Appendix C (on-site detention), August 2017 (design standard “100 Year ARI post development site run-off does not exceed the 5 year ARI pre-development site runoff”; catchment-outlet finding of “almost no resulting difference in the peak flows as a result of OSD”). — Cited at: response 3.2.1a.

49. Ronalds, R. and Zhang, H. (2019), “On-site stormwater detention for Australian development projects: Does it meet frequent flow management objectives?”, Water Science and Engineering, vol. 12 no. 1. https://www.sciencedirect.com/science/article/pii/S1674237019300213 — Cited at: response 3.2.1a.

50. Drumond, P., Coutinho, J. and Moura, P. (2020), “Are the current On-site Stormwater Detention (OSD) policies the best solution for source control stormwater management? A case study of Australian and Brazilian cities”, Urban Water Journal, vol. 17 no. 3. — Cited at: response 3.2.1a.

51. County of Cumberland Planning Scheme 1951, given legislative force by the Local Government (Amendment) Act 1951 (New South Wales), Act No 18 of 1951, assented 27 June 1951. The Scheme introduced land-use zoning, green belt and reservations. It contained no density, height or site-coverage standard. https://legislation.nsw.gov.au/view/pdf/asmade/act-1951-18

52. Height of Buildings (Amendment) Act 1957 (New South Wales), Act No 12 of 1957, assented 8 April 1957, amending s 4(4) of the Height of Buildings (Metropolitan Police District) Act 1912 (New South Wales) — the first floor-space-to-site-area ratio in New South Wales law, imposed “to the intent that the number of persons to be accommodated shall not exceed the number which would have been accommodated had the building been erected in all parts to a height of one hundred and fifty feet.” Verified against the Bill as introduced, cl 4(iii): https://www.parliament.nsw.gov.au/historicbills/files/12644/Various%20Versions%201.pdf The 1957 amendment made the 150-foot ceiling exceedable where “the skyline and the plans of such building have been approved by the Minister upon the recommendation of the Committee”, and the same subsection required conditions “specifying the area of the site of the building and the location thereof to be set aside for the loading or unloading of goods.”

53. Northern Beaches Council, planning proposal PP-2024-1343, Appendix J-3 — FSR Analysis of Low Density Residential Zoned Land, New South Wales Planning Portal, 2024. Method: 2,177 development applications lodged 2011–2022; control set at the 70th percentile. The appendix is titled “FSR Analysis of Low Density Residential Zoned Land” and forms part of planning proposal PP-2024-1343 for a new comprehensive Local Environmental Plan; its stated method was “An analysis of FSR data for 2,177 properties located across the Northern Beaches was undertaken to ascertain the average and xth percentile FSR… FSR data for 2,177 properties sourced from development applications lodged with the Northern Beaches Council (and former Manly, Warringah and Pittwater Councils) during the period 2011-2022”, and the recommended controls were set at “the 70th percentile FSR – that is, at which 70% of the more than 2,000 properties sampled had an FSR at or below the value indicated.”

54. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (New South Wales), as made, cl 3.13(1) — 8.5 m maximum dwelling-house height. https://legislation.nsw.gov.au/view/pdf/asmade/epi-2008-572

55. Stewart Smith, The NSW Housing Code, New South Wales Parliamentary Library Research Service, E-Brief 2/09, February 2009 — the only recorded validation of the Code is that it “had undergone extensive testing on pre-existing housing stock.” https://www.parliament.nsw.gov.au/researchpapers/Documents/the-nsw-housing-code/Housing%20Code.pdf The document is the New South Wales Parliamentary Library Research Service’s review of the Housing Code; the validation it records is a third-party observation that the Code “had undergone extensive testing on pre-existing housing stock to ensure that the Code resulted in reasonable design outcomes”.

56. Bayside Council, Botany Bay Development Control Plan 2013, Part 8 — Character Precincts, s 8.3.1 and s 8.3.2 (Pagewood precinct). https://www.bayside.nsw.gov.au/sites/default/files/2021-08/Part%208%20Character%20Precincts.pdf Part 8 is titled “Character Precincts” and the plan is published by Bayside Council. The existing local character statement at 8.3.1 reads in full: “The Pagewood Precinct contains a significant portion of the LGA’s low density residential development, being one and two storey detached dwelling houses of varying architectural styles and periods.” The companion chapter states that “Part 8 - Character Precincts identifies the existing character of each planning precinct within the City and defines the Desired Future Character to maintain and enhance the unique qualities of each area”, with the control “Development must be designed to reinforce and maintain the existing character of the streetscape.”

57. Inner West Council, Inner West Development Control Plan, Part 3 — Land Use Controls, s 3.1.3 control C8 (setbacks "calculated by averaging the front and rear setbacks of the adjoining main buildings on either side of the subject site"). Draft on exhibition; confirm adoption before lodgement. The control appears in Inner West Development Control Plan, Part 3 — Land Use Controls.

58. North Sydney Council, North Sydney Development Control Plan 2013, Part C, Section 1 — Area Character Statements: "derived from the Area Character Study that was originally undertaken by Council in 1998." https://www.northsydney.nsw.gov.au/downloads/file/3203/dcp-2013-part-c-section-1-area-character-statements The statements appear in North Sydney Development Control Plan 2013, Part C, Section 1 — Area Character Statements.

59. Standard Instrument — Principal Local Environmental Plan, made by the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales), cl 4.3, 4.4 and 4.5. Clause 4.4(1)(a) reads "[set out objectives of the clause]".

60. New South Wales Department of Planning, Housing and Infrastructure, Local Environmental Plan Making Guideline — strategic merit and site-specific merit tests; the latter directs the assessor to "existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates." The Guideline's standard study requirements ask for an urban design study which "may be required" and which should include "the vision and proposed future character" and "built form outcomes including numeric and assumptions made", and for a reference scheme "demonstrating built form feasibility and development capacity" through "representative massing and testing of built form". The Guideline is the operative departmental instruction for making and amending Local Environmental Plans.

61. New South Wales Department of Planning, Local Environmental Plan Practice Note PN 08-001 — Height and floor space ratio, issued 30 January 2008, never revised. https://www.planning.nsw.gov.au/sites/default/files/2023-04/practice-note-pn-08-001-height-and-floor-space-ratio.pdf Local Environmental Plan Practice Note PN 08-001 — Height and floor space ratio; the "Revised" field on its cover page is blank. The direction that the two controls be applied together appears under the heading "Other issues and considerations". The allocation direction reads: "DCPs may however include additional built form provisions such as building setbacks, storey controls and details of three-dimensional building envelopes. These should not exceed the maximum height and FSR controls that are set in the LEP."

62. Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, Preston CJ at [56]–[63]. https://www.caselaw.nsw.gov.au/decision/173f9a8609ee87c80fd8b7f7 The passage at [98] reads in full: "Construction of the term 'desired future character' that would confine its meaning to being defined and fixed by the development standards only would make forming the opinion of satisfaction under cl 4.4(4)(a)(ii) … difficult, if not impossible. On this construction, the height and FSR development standards define and fixed the desired future character. A development that contravenes the height and FSR development standards needs to demonstrate that it will be consistent with the desired future character. It cannot do this because, contravening the development standards, it is inconsistent with the desired future character that is defined and fixed by those development standards." The passage at [99] reads: "This circularity is avoided if the term 'desired future character' is construed as permitting regard to be had to matters other than only the development standard."

63. City of Newcastle, Variations to Development Standards Report, 1st Quarter 2025 — DA2024/00937, 54 Greaves Street, Mayfield East: a 0.12% floor space ratio variation requiring a full written clause 4.6 request. https://ncc.nsw.gov.au/getmedia/75f596eb-b7ee-43dc-9000-fc444b475a11/Variations-to-Development-Standards-Report-1st-Quarter-2025-City-of-Newcastle.pdf

64. Independent Planning Commission New South Wales, Advice Report: 34 to 46 Brookhollow Avenue, Norwest (PP-2023-2049), 2024 — built-form reasoning confined to deference, negotiation and interface with neighbours. The Commission's finding on built form reads in full: "The Commission agrees with the Department and Council in relation to the built form and urban design outcome proposed to be realised through the Planning Proposal, noting that the height of the commercial and residential components have been reduced through the Proponent's revisions. The Commission is satisfied that the current Concept Plan is the subject of detailed consultation and negotiation between the Proponent and Council, and considers that the residential component demonstrates an appropriately sensitive interface to neighbouring residential development west and south of the Site."

65. New South Wales Department of Planning and Environment, Explanation of Intended Effect: Changes to create low and mid-rise housing, December 2023 — average maximum height 9.9 m and floor space ratio 0.73:1

across medium-density lots in the Six Cities Region; 77% of residential areas zoned low density; 94% of Greater Sydney councils prohibit multi-dwelling housing in low-density zones. https://www.planning.nsw.gov.au/sites/default/files/2023-12/eie-changes-to-create-low-and-mid-rise-housing.pdf The consultation document is Explanation of Intended Effect: Changes to create low and mid-rise housing, published December 2023. The document is the Explanation of Intended Effect: Changes to create low and mid-rise housing, December 2023. The measured controls are stated as: “Across all medium density lots in the Six Cities Region, the average maximum height of building control is around 9.9 m and the average maximum floor space ratio control is 0.73:1. These controls only enable a 3-storey building with a limited number of apartments possible. Such small developments are not usually economically feasible to deliver in well located areas.” and “Even in High Density Residential zones, the average maximum height of building control is around 15.8 m and the average maximum floor space ratio control is 1.25:1. Again, these controls only enable a 4- to 5-storey building with a limited number of apartments possible.” The zoning proportions are stated as “around 77% of residential areas are zoned for low density. But only around 12% of areas are zoned for medium density and 2% for high density”; that “residential flat buildings and shop-top housing are prohibited in around 60%” of medium density areas; and that “multi-dwelling housing is prohibited in the Low Density Residential zone in 82% of lots across the Six Cities”.

66. New South Wales Government, Low and Mid-Rise policy to unlock 112,000 homes in five years, 21 February 2025 — “only two of 33 councils in Greater Sydney allow terraces and townhouses in low-density (R2) zones”. https://www.planning.nsw.gov.au/news/low-and-mid-rise-policy-to-unlock-112000-homes-in-five-years

67. Australian Bureau of Statistics, 2021 Census of Population and Housing, General Community Profile Table G36 Dwelling Structure, Greater Sydney — 73.7% of occupied private dwellings in one-to-two storey built form; 10.2% in four-to-eight storey blocks. https://www.abs.gov.au/census/find-census-data/community-profiles/2021/1GSYD

68. New York City Department of City Planning, Primary Land Use Tax Lot Output (PLUTO) v26v1, updated 28 May 2026 — 37.3% of the city’s 3,753,223 residential units are in buildings of four to eight storeys. https://data.cityofnewyork.us/City-Government/Primary-Land-Use-Tax-Lot-Output-PLUTO-/64uk-42ks

69. Ross Kendall and Peter Tulip, The Effect of Zoning on Housing Prices, Reserve Bank of Australia Research Discussion Paper RDP 2018-03, March 2018 — zoning raised detached house prices 73% above marginal cost in Sydney as at 2016. This is an aggregate measure of zoning restrictiveness and is not attributable to any single control. https://www.rba.gov.au/publications/rdp/2018/pdf/rdp2018-03.pdf

70. Australian Bureau of Statistics, Housing Occupancy and Costs, Australia, 2019–20, released 25 May 2022, Data cube 7 “Housing utilisation” — 44.3% of households have two or more spare bedrooms; 23.1% of multiple-family households need one or more additional bedrooms, against 3.8% nationally. https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/latest-release The density-standard provenance section additionally relies on data cube 2 (Housing occupancy).

71. Subordinate Legislation Act 1989 (New South Wales), s 3 (definition of “statutory rule”), s 5 (regulatory impact statement duty), Schedule 2 (contents of a regulatory impact statement) and Schedule 4 item 22 (exclusion of ordinances under Part 12A of the Local Government Act 1919 (New South Wales); item inserted after the Act as made). https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1989-146

72. Interpretation Act 1987 (New South Wales), s 5(6) — a closed list of provisions extended to environmental planning instruments; the disallowance provision, s 41, is not among them. https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1987-015

73. Subordinate Legislation Act 1994 (Victoria), s 3, definition of “legislative instrument”, paragraphs (d) and (e) — planning schemes, planning scheme amendments and the Victoria Planning Provisions excluded by name; the “legislative instrument” concept was inserted by Act No 78/2010 s 25(1). https://www.legislation.vic.gov.au/in-force/acts/subordinate-legislation-act-1994/045

74. New South Wales Department of Planning, Industry and Environment, Draft Environmental Planning and Assessment Regulation 2021 — Regulatory Impact Statement, 2021. https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/EP&A%202021%20Regulatory%20Impact%20Statement%20(RIS).pdf

75. Environmental Planning and Assessment Act 1979 (New South Wales), s 3.21 — the only review obligation: the Planning Secretary and councils are to “determine whether relevant … plans should be updated” every five years. No methodology, evidence standard, publication requirement or consequence is prescribed. See also s 1.3

(objects of the Act, as recast by the Environmental Planning and Assessment Amendment (Planning System Reforms) Act 2025).

76. Ryan Greenaway-McGrevy and Peter C B Phillips, “The impact of upzoning on housing construction in Auckland”, Journal of Urban Economics 136 (2023) 103555 — difference-in-differences with set-identification bounding displacement: 21,808 additional dwellings consented in five years, 4.11% of the housing stock. https://cowles.yale.edu/sites/default/files/2024-02/p1863.pdf

77. Ryan Greenaway-McGrevy, “Can zoning reform increase housing construction? Evidence from Auckland”, Economic Policy Centre Working Paper 017, University of Auckland, September 2025 (Economic Modelling, 2026) — synthetic control against 50 New Zealand donor cities: 46.5% of 112,300 permits attributable to the reform; +86.8% over seven years; p = 0.02. https://www.auckland.ac.nz/assets/business/our-research/docs/economic-policy-centre/EPC-WP017.pdf

78. Ryan Greenaway-McGrevy and co-authors, “Can zoning reform reduce housing costs? Evidence from rents in Auckland”, Economic Policy Centre Working Paper 016 (Economic Inquiry, 2025–26) — three-bedroom rents 26 to 33% below the synthetic control six years post-reform.

79. Santosh Anagol, Fernando Ferreira and Jonah Rexer, “Estimating the Economic Value of Zoning Reform”, National Bureau of Economic Research Working Paper 29440 (October 2021, revised March 2023) — spatial regression discontinuity at São Paulo zoning boundaries; nominal incumbent homeowner losses exceed consumer welfare gains approximately sixteen-fold. Working paper, not peer reviewed.

80. Productivity Commission, Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments, Research Report, April 2011 — three separate major surveys commissioned because of “a lack of comparable data generally across jurisdictions”; “there is no agreed set of indicators for city liveability”. https://www.pc.gov.au/inquiries/completed/regulation-benchmarking-planning/report/planning-volume1.pdf

81. Heritage Act 1977 (New South Wales) — silent as to heritage-consultant qualifications; the Design and Building Practitioners Act 2020 (New South Wales) contains no heritage practitioner class. Contrast the Architects Act 2003 (New South Wales). Australia ICOMOS full membership requires three years’ experience and a statement; the Burra Charter 2013 is a private charter with force only where adopted by policy.

82. Rod Bogaards, Cost Benefit Analysis and Historic Heritage Regulation, Office of Best Practice Regulation Working Paper 2008-03 — “Typically cost considerations are irrelevant for the decision to list”; “heritage costs seem to be largely unknown and unassessed.” https://oia.pmc.gov.au/sites/default/files/2021-06/wp3_rbogaards_historic_heritage.pdf

83. Statement of Heritage Impact prepared by the author for the two-dwelling infill project described at section 4.2, dated 20 January 2026 and issued prior to 1 July 2026; author's files, de-identified — worked example of the assessment method described above, including the absence of any defined meaning for "our" history and "persons of significance".

84. National Parks and Wildlife Act 1974 (New South Wales), Part 6, and the Aboriginal Heritage Information Management System administered by Heritage NSW — the separate statutory regime under which Aboriginal cultural heritage is assessed.

85. Gabriel M Ahlfeldt, Nancy Holman and Nicolai Wendland, An Assessment of the Effects of Conservation Areas on Value, English Heritage, May 2012 — hedonic analysis of 1,088,446 transactions across 8,167 English conservation areas with a difference-in-differences on new designations: “We do not find a statistically significant designation effect”. https://historicengland.org.uk/content/docs/research/assessment-ca-value-pdf

86. Gabriel M Ahlfeldt, Kristoffer Möller, Sevrin Waights and Nicolai Wendland, “Game of Zones: The Political Economy of Conservation Areas”, The Economic Journal (2017) — designation is politically endogenous; the share of degree-educated residents predicts the designated land share; new designations raise values just outside the boundary rather than inside it. https://onlinelibrary.wiley.com/doi/abs/10.1111/ecoj.12454

87. Ingrid Gould Ellen and Brian J McCabe, “Balancing the Costs and Benefits of Historic Preservation”, ch 4, Cambridge University Press, 2016 (New York University Furman Center) — historic districts reduce the share of lots seeing new construction by approximately three percentage points; approximately 119 million square feet of allowable residential floor area unused on privately owned historic district lots, equivalent to about 119,000 dwellings.

88. Hans R A Koster and Jan Rouwendal, Historic Amenities and Housing Externalities: Evidence from The Netherlands, Tinbergen Institute Discussion Paper, 11 February 2015 — repeat-sales with a Bartik-style instrument; counterfactual benefit-cost ratios of 1.14 to 4.28. Values heritage investment, not heritage regulation. https://papers.tinbergen.nl/15023.pdf

89. Environmental Planning and Assessment Act 1979 (New South Wales), Act No 203 of 1979, assented 21 December 1979, section 4 (definition of "development standards"). https://www.legislation.nsw.gov.au/acts/1979-203.pdf Paragraph (d) of the definition of "development standards" in section 4 refers to "the cubic content or floor space of a building."

90. Height of Buildings (Metropolitan Police District) Act 1912 (New South Wales), Act No 58 of 1912, assented 10 December 1912, section 4(1). https://www.legislation.nsw.gov.au/acts/1912-58.pdf Section 4(1) provided that a building "shall not under any circumstances be erected of or increased to a greater height than one hundred and fifty feet."

91. City of Sydney, Central Sydney Planning Strategy — Context (Attachment B4, Draft), pp 69–72, "Central Sydney planning: a history," citing Punter (2004). https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files_a-1/attachment-b4-draft-central-sydney-planning-strategy.pdf The account also records that the Committee "continued to make decisions about tall buildings in Central Sydney until the mid-1980s"; that "[w]hile many of these schemes would never be built, the development of a number of large Central Sydney sites stagnated for many years as a result of over-generous planning consents"; that "[e]ven though the maximum was intended to be the exception, it became the norm"; and that the resulting buildings displayed "excessive bulk, wind impacts, intrusive car parking ramps, poor access and underutilised plazas."

92. Zoning Resolution of the City of New York adopted 25 July 1916, as codified including all amendments adopted prior to 1 November 1960, City Planning Commission, City of New York. https://www.nyc.gov/assets/planning/download/pdf/about/city-planning-history/1960_zoning_resolution.pdf ; and "Zoning History," The Skyscraper Museum, https://skyscraper.org/zoning-history/ The 1916 Resolution was the first comprehensive zoning ordinance in the United States.

93. Voorhees Walker Smith & Smith, Zoning New York City: A Proposal for a Zoning Resolution for the City of New York, submitted to the City Planning Commission, August 1958. https://www.nyc.gov/assets/planning/download/pdf/about/city-planning-history/zoning_nyc.pdf The report is Voorhees Walker Smith & Smith, Zoning New York City: A Proposal for a Zoning Resolution for the City of New York (August 1958). The envelope provision quoted permits a building "to cover 40 percent of the lot without any required setbacks or limitation by angles (the sky exposure planes) as long as the Floor Area Ratio is not exceeded."

94. "Privately Owned Public Space: History," New York City Department of City Planning (archived). https://web.archive.org/web/2022id_/https://www1.nyc.gov/site/planning/plans/pops/pops-history.page

95. "Density: Individual Cases," The Skyscraper Museum, https://skyscraper.org/housing-density/individual-cases/ ; Unplanned Shrinkage, Citizens Housing & Planning Council, https://chpcny.org/publication/unplanned-shrinkage/ The Skyscraper Museum's statement in full is that the 1961 Resolution "dramatically reduced the total amount of built density allowed citywide … cutting the hypothetical total developable area of the city by more than three quarters."

96. "How Big Is Too Big For New York City?", City Limits, quoting Professor Vicki Been, Director, Furman Center, New York University. https://citylimits.org/how-big-is-too-big-for-new-york-city/

97. United Kingdom Parliament, Hansard, House of Lords, "Height of New City Building," 9 July 1953, https://hansard.parliament.uk/Lords/1953-07-09/debates/8c5019b9-960b-4197-b2f9-6366670cbf26/HeightOfNewCityBuilding ; House of Lords, "London Skyscrapers," 22 February 1962, https://hansard.parliament.uk/Lords/1962-02-22/debates/01f22429-a3be-4904-938e-2afad8ad9654/LondonSkyscrapers The description was given by Lord Mottistone: "what is called 'plot ratio'—that is, the ratio between the floor space to be permitted and the area of the site."

98. Akihiko Osawa, "The Birth and Development of High-Rise Buildings in Japan: Focusing on the Historical Development of Height and Floor Area Ratio Regulations," International Journal of High-Rise Buildings 12(3) (2023) 195–201. https://www.koreascience.kr/article/JAKO202330739282953.pdf The published account gives the stated rationale as to "balance the total floor area with the supply and processing capacity of roads, water, sewage, and other infrastructure within the city."

99. Junwei Li and Kar Him Mo, "Exploring the transatlantic origins of the plot ratio from New York to colonial Hong Kong," Planning Perspectives, published online 7 November 2025, DOI 10.1080/02665433.2025.2582588 (abstract; full text not accessed).

100. City of Sydney Planning Scheme Ordinance, Ordinance 1971 No 172, published in New South Wales Government Gazette No 78, 16 July 1971, clause 42. https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/2020-07-migrated/files_c-1/cos-planning-scheme-ordinance.pdf The map is the Height of Buildings Restriction Map. Clause 42 provided that "a building shall not be erected on any land shown on such map to a height above standard datum greater than that shown thereon in relation to such land."

101. Environmental Planning and Assessment Model Provisions 1980 (New South Wales), clauses 4 and 15. https://legislation.nsw.gov.au/view/whole/html/2000-02-01/epi-1980-0055

102. New South Wales Department of Planning, Local Environmental Plan Practice Note PN 11-001 — Preparing LEPs using the standard instrument: standard clauses, issued 10 March 2011. https://www.planning.nsw.gov.au/sites/default/files/2023-04/practice-note-pn-11-001-preparing-leps-using-the-standard-instrument-standard-clauses.pdf

103. Sydney Local Environmental Plan 2012 (New South Wales), clause 4.4(1), as recited in Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61; Inner West Local Environmental Plan 2022 (New South Wales), clause 4.4(1), as recited in Dao v Inner West Council [2025] NSWLEC 1741; Hornsby Local Environmental Plan 2013 (New South Wales), clause 4.4, as recited in Hornsby Shire Local Planning Panel agenda, 28 May 2025. [Verify each against legislation.nsw.gov.au before lodgement.]

104. Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, Preston CJ. https://www.caselaw.nsw.gov.au/decision/5ccbe360e4b0196eea406ae9 The passage reads: "Objective (b) is explanatory of the central purpose of the floor space ratio development standard to regulate the density of development, built form and land use intensity of buildings on land in the local area. … But the regulation of the density of development, built form and land use intensity is not the end to be achieved by the clause, rather it is a means to achieve the goals identified in objective (a) … objective (c) … and objective (d) …"

105. New South Wales Department of Planning and Environment, Apartment Design Guide, Part 2 "Developing the controls," sections 2B and 2D. https://www.planning.nsw.gov.au/sites/default/files/2023-03/apartment-design-guide-part-2-developing-the-controls.pdf The Apartment Design Guide is published by the New South Wales Department of Planning and Environment under State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development; the passages quoted appear in Part 2, "Developing the controls". The guide states that the primary development controls, "[w]hen applied together … create a building envelope, which forms the three dimensional volume where developments should occur", that "[t]he envelope provides an overall parameter for the design of the development", that "[i]n new urban areas or where an existing neighbourhood is undergoing change, building envelopes should be tested prior to setting FSR controls", and that the 25-30% allowance is "to allow for building components that do not count as floor space but contribute to building design and articulation such as balconies, lifts, stairs and open circulation space."

106. Hornsby Shire Local Planning Panel, agenda 28 May 2025, development application at 240–242 Pennant Hills Road, Thornleigh. https://businesspapers.hornsby.nsw.gov.au/Open/2025/05/LPP_28052025_AGN_AT_SUP.htm Council's assessment also recorded that "the contravention would not be out of character when viewed from the public domain and would not result in amenity impacts to adjoining properties in terms of overshadowing, views or outlook."

107. Dao v Inner West Council [2025] NSWLEC 1741. https://www.caselaw.nsw.gov.au/decision/199cc0342ff9a3735ea833af The relationship between the height and floor space ratio controls is therefore inconsistent between councils rather than uniformly duplicative.

108. New South Wales Planning Portal, Variations Register. https://www.planningportal.nsw.gov.au/insights-and-demography/variations-register

109. Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (France); ministerial answer, Sénat, question écrite n° 17658 (2015), https://www.senat.fr/questions/base/2015/qSEQ150817658.html ; Services de l'État en Loir-et-Cher, "Suppression du COS (Loi Alur)." [Article number to be confirmed against Légifrance.] The statute is the Loi n° 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové (France). The quoted phrase means the combination of the density rules set by the local urban plan (Plan Local d'Urbanisme).

110. Ville de Paris, Règlement du Plan Local d'Urbanisme, and Plan Local d'Urbanisme bioclimatique approved by the Conseil de Paris 20 November 2024. https://data.geopf.fr/annexes/gpu/documents/DU_75056/7700f285f39b8e589476ea77e7db9527/75056_reglement_20230704.pdf The height ceiling is read from a general heights plan; emprise au sol is site coverage.

111. Institut national de la statistique et des études économiques (France), Dossier complet, Commune de Paris (75056) and Paris 11e Arrondissement (75111), 2022 census. https://www.insee.fr/fr/statistiques/2011101?geo=COM-75056

112. Atelier Parisien d'Urbanisme, Densités vécues et formes urbaines : étude de quatre quartiers parisiens, June 2003. https://www.apur.org/sites/default/files/documents/165.pdf

113. Bauordnung für Wien (Building Code for Vienna), sections 75 and 76. https://www.jusline.at/gesetz/bo_fuer_wien/paragraf/75 and /76 [Verify at the Rechtsinformationssystem des Bundes before lodgement.] Bauordnung für Wien: Building Code for Vienna; Bauklasse: building class.

114. Baunutzungsverordnung (Federal Land Use Ordinance, Germany), section 17, as amended by the Baulandmobilisierungsgesetz 2021 (Germany); Baugesetzbuch (Federal Building Code, Germany), section 34. https://lxgesetze.de/baunvo/17 ; https://www.berlin.de/ba-spandau/politik-und-verwaltung/aemter/stadtentwicklungsamt/stadtplanung/artikel.217158.php Baunutzungsverordnung: Federal Land Use Ordinance; Baugesetzbuch: Federal Building Code. The figures in section 17 were Obergrenzen (binding upper limits) and are now Orientierungswerte (orientation values).

115. Senatsverwaltung für Stadtentwicklung, Berlin, Umweltatlas Berlin — Gebäudehöhen 2023. https://www.berlin.de/umweltatlas/nutzung/gebaeudehoehen/fortlaufend-aktualisiert/kartenbeschreibung/

116. Pla General Metropolità d'Ordenació Urbana 1976 (Barcelona), Normes Urbanístiques, zone key 13a. https://www.gramenet.cat/fileadmin/Files/Ajuntament/informacio_urb/Normes_i_Ordenances/Claus_Urbanistiques/13arv.pdf

117. Building Standards Act 1950 (Japan), Act No 201 of 1950, articles 6, 52, 56-2, 59-2, 60 and 60-2, current revision enforced 27 May 2026; City Planning Act 1968 (Japan), Act No 100 of 1968, article 8; Act on Special Measures Concerning Urban Renaissance 2002 (Japan), Act No 22 of 2002, article 36. https://laws.e-gov.go.jp/api/2/law_data/325AC0000000201 ; https://www.japaneselawtranslation.go.jp/en/laws/view/4024/en

118. Tokyo Metropolitan Government, Tokyo Statistical Yearbook 2023, Table 3-10 (source: Ministry of Land, Infrastructure, Transport and Tourism, Housing Starts Statistics) and Table 2-1. https://www.toukei.metro.tokyo.lg.jp/tnenkan/2023/tn23q3e003.htm Source: Housing Starts Statistics, Ministry of Land, Infrastructure, Transport and Tourism (Japan).

119. Australian Bureau of Statistics, Building Activity, Australia, December 2024 and March 2026 releases. https://www.abs.gov.au/statistics/industry/building-and-construction/building-activity-australia/latest-release

120. Federal Reserve Bank of St Louis, FRED series JPNCPIHOUMINMEI (Consumer Price Index: Housing, Japan, discontinued May 2018) and QJPR628BIS (Real Residential Property Prices for Japan, Bank for International Settlements); "Central Tokyo condo price tops ¥100 million for second straight year," The Japan Times, 22 April 2025, reporting Real Estate Economic Institute data.

121. Law of the People's Republic of China on Urban and Rural Planning 2007, articles 19, 37, 40, 48 and 50; Regulations of Shanghai Municipality on Urban and Rural Planning, article 30. https://english.mee.gov.cn/Resources/laws/envir_elatedlaws/201705/t20170514_414041.shtml ; https://faolex.fao.org/docs/pdf/chn135400E.pdf The statute is the Law of the People's Republic of China on Urban and Rural Planning 2007; the municipal instrument is the Regulations of Shanghai Municipality on Urban and Rural Planning.

122. 上海市城市规划管理技术规定（土地使用建筑管理） (Shanghai Municipality Technical Regulations on Urban Planning Administration — Land Use and Building Administration), Shanghai Municipal Government Order No 12 of 2003 as amended by Order No 52 of 2010, articles 14, 15, 23 and 27 and Tables 2 and 3. https://www.shanghai.gov.cn/cmsres/86/86b1c89fade347b3b2349e077bfe8a99/0e5e011bfdea700a47c78f3c9c55d3af.pdf

123. Multiple Dwelling Law (New York), section 26, as amended by the New York State budget legislation of April 2024. https://www.nysenate.gov/legislation/laws/MDW/26 The base provision continues to read: "The floor

area ratio (FAR) of any dwelling or dwellings on a lot shall not exceed 12.0.” The 2024 exceptions are subject to a historic-district exclusion, a certificate of no harassment requirement and tenant relocation obligations.

124. New York City Zoning Resolution, section 23-22, last amended 5 December 2024; New York City Council, “New York City Council Passes Historic Citywide Zoning Reforms Estimated to Create over 82,000 New Homes,” 5 December 2024. https://zr.planning.nyc.gov/article-ii/chapter-3/23-22 ; https://council.nyc.gov/press/2024/12/05/2761/

125. State Environmental Planning Policy (Housing) 2021 (New South Wales), Chapter 6 (Low and Mid Rise Housing), sections 162–180, and Chapter 7 (Pattern Book development), sections 181–182. Read in the consolidated version current for 3 July 2026, accessed 2 August 2026, archived in the project References folder as "SEPP Housing NSW 2021.pdf". Section 164(1) sets the exclusions from Chapter 6 and section 182(1) the exclusions from Chapter 7.

126. State Environmental Planning Policy (Housing) 2021 (New South Wales), Chapter 5, sections 150–161; New South Wales Department of Planning, Housing and Infrastructure, Transport Oriented Development program. https://www.planning.nsw.gov.au/node/10576

127. New South Wales Department of Planning, Housing and Infrastructure / Government Architect New South Wales, “Guidance for councils on mid-rise patterns,” NSW Housing Pattern Book. https://www.planning.nsw.gov.au/government-architect-nsw/housing-design/nsw-housing-pattern-book/mid-rise-designs/guidance-for-councils-on-mid-rise-patterns

128. National Construction Code (Australia), Volume One, clause C1.1 and Table C1.1, and Part D1 clauses D1.2 and D1.3 (NCC 2019 Amendment 1 numbering; NCC 2022 renumbering C2D2, D2D3, D2D4); Specification 18 (NCC 2022); Fire and Rescue New South Wales, position statement on fire sprinklers in Class 2 and 3 buildings, updated August 2024. [Verify against the edition currently adopted in New South Wales before lodgement.]

129. New South Wales Department of Planning, Housing and Infrastructure, NSW Housing Pattern Book: Mid-Rise Patterns Technical Guide, November 2025, pp 10–11, 30 and 39. https://www.planning.nsw.gov.au/sites/default/files/2025-11/nsw-housing-pattern-book-mid-rise-patterns-technical-guide.pdf The guide is the NSW Housing Pattern Book: Mid-Rise Patterns Technical Guide (November 2025).

130. Cumberland Local Environmental Plan 2021 (New South Wales), Zone R2 land use table, as an example of the standard prohibition formula. https://legislation.nsw.gov.au/view/pdf/asmade/epi-2021-651

131. New South Wales Department of Planning, Local Environmental Plan Practice Note PN 11-002 — Preparing LEPs using the standard instrument: standard zones. https://www.planning.nsw.gov.au/sites/default/files/2023-04/practice-note-pn-11-002-preparing-leps-using-the-standard-instrument-standard-zones.pdf

132. Keiley Hunter Town Planning for Tweed Shire Council, Building Heights Workshop, 2017. http://www.keileyhunter.com.au/wp-content/uploads/2017/12/Building-Heights-Worksop-Tweed-Shire-Council.pdf

133. Inner West Council, Inner West Development Control Plan, Part 4 — Place Specific Controls, sections 4.1.3, 4.8.3, 4.10.3, 4.11.3. https://www.innerwest.nsw.gov.au/sites/default/files/2026-04/Inner%20West%20DCP%20Part%204%20-%20Place%20Specific%20Controls%20(1%20of%202).pdf [Cite as a draft on exhibition; adoption not confirmed.] Part 4 is titled “Place Specific Controls”; it was on exhibition as a consolidated draft at the date of this submission; the Croydon Park objective reads in full “To maintain distinctly single storey residential streetscapes within the neighbourhood.” and the Enmore statement reads “The Desired Future Character of Enmore is defined by the preservation of its predominantly low-density and single-storey residential streetscapes.”

134. Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191, Roseth SC, at [19]–[26]. https://www.caselaw.nsw.gov.au/decision/549f88cd3004262463acf4e6 The decision is a planning principle of the Senior Commissioner. The passage at [23] reads in full: “It should be noted that compatibility between proposed and existing is not always desirable… There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing.” The passage at [26] reads: “In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal’s assessment.”

135. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ, at [50] and [93]. https://www.caselaw.nsw.gov.au/decision/5b70e357e4b09e9963071ae6

136. Dirk H R Spennemann, "What Actually Is a Heritage Conservation Area? A Management Critique Based on a Systematic Review of New South Wales (Australia) Planning Documents", Heritage 6(7) (2023) 5270–5304, DOI 10.3390/heritage6070279. https://www.mdpi.com/2571-9408/6/7/279 The study is a systematic review of New South Wales council planning documents. Its findings read in full: "none of the official publications issued by the New South Wales state heritage authorities provide a definition of the purpose of heritage conservation areas that goes beyond the declaring them to be a spatially bounded area containing heritage items" and "It would appear that everybody is supposed to know what a heritage conservation area is, albeit without being given formal guidance to understand this concept."

137. Bondi Residence Pty Ltd v Waverley Council [2024] NSWLEC 1297, at [34] and [37]. https://www.caselaw.nsw.gov.au/decision/18fcd5644e4ec316b6b70f8c

138. North Sydney Council, Planning Proposal 4/22 — Prohibition of Residential Flat Buildings in the R3 Medium Density Residential Zone, post-exhibition report, 13 March 2023. https://www.northsydney.nsw.gov.au/downloads/file/2142/10-02-planning-proposal-4-22-prohibition-of-residential-flat-buildings-in-the-r3-medium-density-residential-zone-post-exhibition-report-13-march-2023

139. Australian Bureau of Statistics, 2021 Census of Population and Housing, Table G41 Dwelling structure by number of bedrooms. https://data.api.abs.gov.au/rest/data/ABS,C21_G41_SA2,1.0.0/all

140. Australian Bureau of Statistics, 2021 Census, Tables G42 Dwelling structure by household composition and G35 Household composition by number of persons usually resident. https://data.api.abs.gov.au/rest/data/ABS,C21_G42_SA2,1.0.0/all

141. Australian Bureau of Statistics, 2021 Census, time-series Tables T15 and T16. https://data.api.abs.gov.au/rest/data/ABS,C21_T16_SA2,1.0.0/all

142. Edgar Liu and Hazel Easthope, Multi-generation households in Australian cities, Australian Housing and Urban Research Institute Final Report No 181, 8 February 2012. https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI_Final_Report_No181_Multi-generation_households_in_Australian_cities.pdf

143. Australian Bureau of Statistics, Year Book Australia, 2012 (cat. no. 1301.0), "Housing Utilisation". https://www.abs.gov.au/AUSSTATS/abs@.nsf/7d12b0f6763c78caca257061001cc588/c4ecccd0a58da6f5ca257a07001ac48c!OpenDocument The statement reads in full: "While Australian households are becoming smaller on average, dwelling size (as indicated by the number of bedrooms) is increasing. The average number of persons per household has declined from 3.1 in 1976 to 2.6 in 2009–10. In the same period, the proportion of dwellings with four or more bedrooms has risen from 17% to 31% and the average number of bedrooms per dwelling has increased from 2.8 to 3.1."

144. Grattan Institute, The Housing We'd Choose, June 2011, citing Australian Bureau of Statistics; and Australian Bureau of Statistics, 2021 Census Table G41.

145. Australian Bureau of Statistics, Cultural diversity: Census, 2021, released 28 June 2022. https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/latest-release ; and 2021 Census QuickStats, Greater Sydney. https://www.abs.gov.au/census/find-census-data/quickstats/2021/1GSYD

146. Australian Bureau of Statistics, National, state and territory population, reference period December 2025, released 18 June 2026. https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/latest-release

147. Jane-Frances Kelly, Ben Weidmann and Marcus Walsh, The Housing We'd Choose, Grattan Institute Report No 2011-5, June 2011, p 9 and footnote 4 (compiling Gibbings 1973; Kendig 1981; Maddocks in Wulff 1993; Thorne 1983; King 1983; Wulff et al 2004). https://grattan.edu.au/wp-content/uploads/2014/04/090_cities_report_housing_market.pdf

148. Wendy Stone, Steven Rowley, Sharon Parkinson, Amity James and Angela Spinney, The housing aspirations of Australians across the life-course: closing the housing aspirations gap, Australian Housing and Urban Research Institute Final Report No 337, based on the Australian Housing Aspirations Survey 2018 (n = 7,343).

https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-337-The-housing-aspirations-of-Australians-across-the-life-course-closing-the-housing-aspirations-gap.pdf

149. Deloitte Access Economics, The Housing Aspirations of New Settlers to Australia, for the National Housing Supply Council, 15 June 2011. https://treasury.gov.au/sites/default/files/2019-03/nhsc-settlement-patterns-of-migrants-dae.pdf The research was undertaken for the National Housing Supply Council and examined the tenure transition of migrant households from renting to ownership.

150. Kelly, Weidmann and Walsh, The Housing We'd Choose, Tables 2 and 3, June 2011 (Trade-Off survey, n = 572). https://grattan.edu.au/report/the-housing-wed-choose/

151. Ben Weidmann and Jane-Frances Kelly, What Matters Most? Housing preferences across the Australian population, Grattan Institute, September 2011 (n = 706). https://grattan.edu.au/wp-content/uploads/2014/04/109_what_matters_most.pdf

152. Australian Bureau of Statistics, Year Book Australia, 2012, "Housing Utilisation"; and Australian Housing and Urban Research Institute, Are there 1 million empty homes and 13 million unused bedrooms?, 13 September 2022. https://www.ahuri.edu.au/analysis/brief/are-there-1-million-empty-homes-and-13-million-unused-bedrooms The caution is issued by both the Australian Bureau of Statistics and the Australian Housing and Urban Research Institute in respect of dwellings recorded as having spare bedrooms under the Canadian National Occupancy Standard.

153. Hazel Easthope and others, Improving outcomes for apartment residents and neighbourhoods, Australian Housing and Urban Research Institute Final Report No 329, 2020. https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-329-Improving-outcomes-for-apartment-residents-and-neighbourhoods.pdf

154. The Hon Clare O'Neil MP, Minister for Housing, Homelessness and Cities, and Senator the Hon Murray Watt, Minister for the Environment and Water, "Action on red tape and approvals to build more homes, more quickly", joint media release, 23 August 2025 — announcing the pause of further residential changes to the National Construction Code until mid-2029, excepting essential safety and quality measures, and committing to remove code barriers to modern methods of construction including prefabrication. https://ministers.treasury.gov.au/ministers/clare-oneil-2025/media-releases/action-red-tape-and-approvals-build-more-homes-more — Cited at: section 2.10.

155. Building Ministers' Meeting, endorsement of the pause on residential changes to the National Construction Code until mid-2029, 22 October 2025. [Verify against the Building Ministers' Meeting communiqué before lodgement; reported in The Urban Developer, "Construction Code Pause Wins Ministers' Endorsement".] https://www.theurbandeveloper.com/articles/national-construction-code-2025-ministers-endorse-pause — Cited at: section 2.10.

156. Australian Building Codes Board, "History" and "Editions of the National Construction Code", ncc.abcb.gov.au — edition chronology: Building Code of Australia first published 1988; performance-based edition 1996; annual editions to 2016; National Construction Code from 2011, incorporating the Plumbing Code of Australia; three-yearly editions 2019, 2022, 2025; free online access from February 2015. [The site blocks automated retrieval; chronology cross-checked against secondary sources — verify against this page before lodgement.] https://ncc.abcb.gov.au/editions-national-construction-code — Cited at: section 2.10.

157. ABC News, "Albanese government to freeze construction code until 2029, fast-track housing approvals", 23 August 2025 — reporting the announcement and the approximately 2,000-page length of the National Construction Code. https://www.abc.net.au/news/2025-08-23/national-construction-code-pause-housing-minister-clare-oneil/105689760 — Cited at: section 2.10.

158. New South Wales Government, "General building work" (licensing), NSW Fair Trading / Building Commission New South Wales — "you need a licence or certificate to do any residential building work, including general building work valued at more than $5000 in labour and materials (including GST)"; Home Building Act 1989 (New South Wales). https://www.nsw.gov.au/business-and-economy/licences-and-credentials/building-and-trade-licences-and-registrations/general-building-work — Cited at: section 2.11.

159. Queensland Building and Construction Commission, "When you need a licence" — licence required for building work valued over $3,300; section 42 of the Queensland Building and Construction Commission Act 1991 (Queensland); section 5 and Schedule 1 of the Queensland Building and Construction Commission Regulation

2018 (Queensland). https://www.qbcc.qld.gov.au/licences/start-your-career/when-you-need-licence — Cited at: section 2.11.

160. New South Wales Government, “Working interstate and mutual recognition”; and Building and Plumbing Commission (Victoria), “Automatic Mutual Recognition” — Queensland not participating in Automatic Mutual Recognition; New South Wales design and building practitioners ineligible; all classes of building surveyor exempt in Victoria. https://www.nsw.gov.au/business-and-economy/licences-and-credentials/building-and-trade-licences-and-registrations/working-interstate-and-mutual-recognition and https://www.bpc.vic.gov.au/builders/registration/automatic-mutual-recognition — Cited at: section 2.11.

161. Housing Industry Association, submission 78 to the Productivity Commission, National Competition Policy analysis, June 2025, pp 3–5 — the National Occupational Licensing Scheme discontinued at the December 2013 Council of Australian Governments meeting; jurisdictions retained their own regulators, records and fees; a mutually recognised builder must still obtain the destination state’s warranty insurance. https://assets.pc.gov.au/393631/sub078-competition-analysis-2025.pdf — Cited at: section 2.11.

162. Encyclopedia of Australian Science and Innovation, “Commonwealth Experimental Building Station (1944–)” — established 1944 at North Ryde by the Australian Government; renamed the National Building Technology Research Centre in the mid-1980s; “In 1988 it was absorbed by the CSIRO … where it played a key role in the development of the Building Code of Australia (BCA), first published in 1988.” https://www.eoas.info/biogs/P007079b.htm — Cited at: section 2.10.

163. Australian Uniform Building Regulations Co-ordinating Council, Building Code of Australia 1988 (National Library of Australia catalogue record, confirming AUBRCC as issuing body); institutional chronology (Interstate Standing Committee on Uniform Building Regulations 1965; Australian Model Uniform Building Code mid-1970s; AUBRCC 1980; Australian Building Codes Board by intergovernmental agreement April 1994) per industry histories. [Verify the 1965/mid-1970s/1980 dates against the Australian Building Codes Board history page before lodgement — the page blocks automated retrieval.] https://nla.gov.au/nla.cat-vn172972 — Cited at: section 2.10.

164. Commonwealth Bank of Australia / CommSec, “Australian houses are world's biggest: CommSec Home Size Trends Report”, November 2020 — average new Australian free-standing house 235.8 square metres in 2019–20, against 233.1 square metres for the United States (2019); average new apartment 136.8 square metres. https://www.commbank.com.au/articles/newsroom/2020/11/commsec-home-size-trends-report.html — Cited at: section 2.12.

165. Australian Bureau of Statistics, “Average floor area of new residential dwellings”, feature article, Building Activity, Australia, catalogue 8752.0, June 2013 — new houses 162.4 square metres in 1984–85, peaking at 247.7 square metres in 2008–09; all new dwellings 149.7 to 207.6 square metres (+38.7%) over the period. https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8752.0Feature+Article1Jun%202013 — Cited at: section 2.12.

166. ZBA Lawyers, “What is commercial building work and do I need a licence to carry these works out?” — “Licensing is not a pre-requisite to carrying out commercial building work” in New South Wales; and New South Wales Government, Have Your Say consultation, “Licensing commercial and home building work”, frequently asked questions — the draft Building Bill proposes “expanding licensing requirements to cover trades operating in the commercial building sector”. https://zbal.com.au/what-is-commercial-building-work-and-do-i-need-a-license-to-carry-these-works-out/ and https://www.haveyoursay.nsw.gov.au/licensing-building-work — Cited at: section 2.11.

167. MinterEllison, “DBP and RAB Acts extended and other changes”, technical update — from 3 July 2023 the Design and Building Practitioners Act 2020 (New South Wales) and the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (New South Wales) extend to class 3 and class 9c buildings; commercial classes remain outside the registration regime. https://www.minterellison.com/articles/dbp-and-rab-acts-extended-and-other-changes — Cited at: section 2.11.

168. Inner West Local Environmental Plan 2022 (New South Wales), section 1.2(2)(g) (aims of plan) and section 6.9 (design excellence). Section 6.9(2) as reproduced in Inner West Council, Local Planning Panel, Planning Proposal Report — Inner West Design Excellence Amendment (PPAP/2026/0001), 17 March 2026, which also records that Council “routinely refers applications that are subject to the Design Excellence clause to Council’s AEDRP” although “this is not currently a process mandated in the LEP”. [Verify section 6.9 against legislation.nsw.gov.au before lodgement — the site blocks automated retrieval.]

https://legislation.nsw.gov.au/view/whole/html/inforce/current/epi-2022-0457 and https://www.innerwest.nsw.gov.au/sites/default/files/2026-03/LPP%20Report%20-%20Design%20Excellence.pdf — Cited at: Appendix K; Appendix C, section 4.2.

169. Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) — contains no compulsory or optional design excellence clause; the only reference is a drafting direction to standard clause 4.3 that a plan may provide for height restrictions to be varied "for the purposes of promoting design excellence". https://legislation.nsw.gov.au/view/whole/html/inforce/current/epi-2006-0155 — Cited at: Appendix K; Appendix C, section 4.2.

170. Government Architect New South Wales, Good Design and Design Excellence in the Planning System, advisory note, version 2, 12 September 2018 — "Design excellence as a term usually describes a requirement or expectation that a project will achieve a level of design quality that is above and beyond the usual"; "Because design excellence is connected to project prominence, it implies a higher standard of design quality than 'good design' and requires the implementation of a process that is more rigorous – often a design competition." https://www.planning.nsw.gov.au/sites/default/files/2023-10/good-design-and-design-excellence-in-the-planning-system-advisory-note.pdf — Cited at: Appendix K; Appendix C, section 4.2.

171. Toga Penrith Developments Pty Ltd v Penrith City Council [2022] NSWLEC 117 (Preston CJ, 12 September 2022), at [71]–[74] and [95]–[97] — the consent authority's opinion that development exhibits design excellence is "a jurisdictional fact – an essential criterion – that must be satisfied in order to enliven the power to grant development consent"; the listed matters must each be answered as the question posed. [Paragraphs read on a judgment mirror; verify on caselaw.nsw.gov.au before lodgement.] — Cited at: Appendix K; Appendix C, section 4.2.

172. Government Architect New South Wales, Evaluating Good Design — Implementing Better Placed design objectives into projects, Issue no. 01, 2018 ("Draft for discussion"), https://www.planning.nsw.gov.au/sites/default/files/2023-10/evaluating-good-design.pdf ; Department of Planning and Environment and Government Architect New South Wales, Design Competition Guidelines, September 2023 — "The jury chair will generally try to negotiate a consensus decision on the winner, however, a majority vote may be used to decide a final outcome", https://www.planning.nsw.gov.au/government-architect-nsw/design-competition-guidelines ; Government Architect New South Wales, NSW State Design Review Panel — Terms of Reference, November 2025 — the panel "typically provides qualitative not quantitative advice", https://www.planning.nsw.gov.au/sites/default/files/2023-10/nsw-state-design-review-panel-terms-of-reference.pdf ; Government Architect New South Wales, Local Government Design Review Panel Manual, November 2022 — "A design review panel does not make decisions; it offers impartial advice for the people who do", https://www.planning.nsw.gov.au/sites/default/files/2023-02/local-government-design-review-panel-manual.pdf — Cited at: Appendix K; Appendix C, section 4.2.

173. Sydney Local Environmental Plan 2012 (New South Wales), clauses 6.21–6.21E as substituted by Sydney Local Environmental Plan 2012 (Amendment No 64), 26 November 2021 — bonus of up to 10 per cent building height or floor space for a "building demonstrating design excellence" (clause 6.21D(3)); up to 50 per cent additional floor space in tower cluster areas (clause 6.21E(2)), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2021-717 ; Margetic v Blue Mountains City Council [2022] NSWLEC 1618 (Dickson C, 9 November 2022) — six-room boarding house refused because "the mandatory precondition at cl 6.19(3) of LEP 2015 is not met" (at [64]), https://www.caselaw.nsw.gov.au/decision/1844fb33d75aafd317147fe6 ; City of Sydney Local Planning Panel, D/2024/10, 36 Selwyn Street, Paddington (secondary dwelling), 24 July 2024 — reason (B): "The development exhibits design excellence under Clause 6.21C of Sydney Local Environmental Plan 2012", https://meetings.cityofsydney.nsw.gov.au/ieDecisionDetails.aspx?Id=5268 — Cited at: Appendix K; Appendix C, section 4.2.

174. Central Sydney Local Environmental Plan 1996 (New South Wales), Part 3A "Urban form and design excellence", clauses 28A–28D and clause 35(1A), inserted 3 March 2000 (Amendment No 8) — clause 28B(1) threshold "a building exceeding 55 metres in height, or … a site exceeding 1 500 square metres"; clause 28D(1) "the consent authority must consider whether the proposed development exhibits design excellence"; clause 28D(6) 50 per cent heritage floor space reduction for a design-competition winner; no occurrence of "10 per cent" in the instrument. Consolidation as at 25 May 2005: https://legislation.nsw.gov.au/view/whole/html/inforce/2005-05-25/epi-1996-0665 . Attribution of the 2000 introduction to Amendment No 8: City of Sydney, Planning Proposal — Sydney Local Environmental Plan 2012

Design Excellence, 2 December 2013, p 3, https://meetings.cityofsydney.nsw.gov.au/Data/Planning%20and%20Development%20Committee/201312021403/Agenda/131203_PDC_ITEM10_ATTACHMENTA.pdf — Cited at: Appendix K; response 3.1.2.

175. Sydney Local Environmental Plan 2005 (New South Wales), clause 10 (waiver of up to 10% of height or floor space ratio where the development "would achieve design excellence"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2005-810 ; Sydney Local Environmental Plan 2012 (New South Wales), clause 6.21 as made 14 December 2012 (applies to every new building and external alteration; must "be designed by practitioners with relevant architectural qualifications and experience" and "exhibit design excellence"; 10% bonus for "exceptional design excellence"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2012-628 ; City of Sydney planning proposal, December 2013 ("extends their application across the entire Local Government Area (LGA) to ensure that significant new development contributes positively"); City of Sydney Local Planning Panel, D/2024/920, 95 Victoria Street Beaconsfield, 9 April 2025 ("The development achieves design excellence"), https://meetings.cityofsydney.nsw.gov.au/documents/s93050/Development%20Application%2095%20Victoria%20Street%20Beaconsfield%20-%20D2024920.pdf — Cited at: Appendix K; response 3.1.2.

176. Freestone R, Davison G, Hu R and Baker S, "The Regulation of Excellence: Design Competitions in Sydney", State of Australian Cities Conference 2015, p 6, summarising Punter J, "Urban design in central Sydney 1945–2002", Progress in Planning 63 (2005) — Sartor "hoped the new provisions would break the monopoly of a small number of large architectural firms … compensate for a lack of design expertise among the City of Sydney's staff; increase certainty for developers; and reduce the number of successful court appeals". [Punter not read directly — obtain before lodgement.] https://scispace.com/pdf/the-regulation-of-excellence-design-competitions-in-sydney-3eerjaxap0.pdf — Cited at: Appendix K; response 3.1.2.

177. Parramatta City Centre Local Environmental Plan 2007 (New South Wales), clause 22B, made 21 December 2007 (competition above 55 m or 13 storeys; floor space ratio or height "up to 10 per cent greater … only if the design … is the result of an architectural design competition"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2007-650 ; Blue Mountains Local Environmental Plan 2015 (New South Wales), clause 6.19(2) ("development for the purposes of a building on land within the area shown on the Built Character Map"), https://legislation.nsw.gov.au/view/whole/pdf/inforce/2018-12-10/epi-2015-0829 ; Hornsby Local Environmental Plan 2013 (Amendment No 11) (New South Wales), 4 December 2020, clause 6.8(2)(b) ("attached dwellings, multi dwelling housing, residential flat buildings or shop top housing"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2020-707 , and Hornsby Shire Council planning proposal PP-2020-81 ("as relevant to dual occupancy development as to a tower in a town centre"), https://apps.planningportal.nsw.gov.au/prweb/PRRestService/DocMgmt/v1/PublicDocuments/DATA-WORKATTACH-FILE%20PEC-DPE-EP-WORK%20PP-2020-81!20201210T012722.464%20GMT ; Department of Planning, Housing and Infrastructure, Gateway determination PP-2023-2891 (Sutherland Shire, design excellence "applicable to all land"), 8 November 2024, https://apps.planningportal.nsw.gov.au/prweb/PRRestService/DocMgmt/v1/PublicDocuments/DATA-WORKATTACH-FILE%20PEC-DPE-EP-WORK%20PP-2023-2891!20241111T060959.735%20GMT ; Department of Planning, Practice Note PN 11-001, 10 March 2011, https://www.planning.nsw.gov.au/sites/default/files/2023-04/practice-note-pn-11-001-preparing-leps-using-the-standard-instrument-standard-clauses.pdf — Cited at: Appendix K; response 3.1.2.

178. Audit Office of New South Wales, Development applications: assessment and determination stages, 12 December 2022 — "96% of applications considered by council staff under delegated authority in 2019–20"; "several reports and reviews have identified skills shortages in town planning for local councils in New South Wales". https://www.audit.nsw.gov.au/our-work/reports/development-applications-assessment-and-determination-stages — Cited at: Appendix K; response 3.1.2.

179. Urban Apartments Pty Ltd v Penrith City Council [2023] NSWLEC 1094 (Horton C) at [87]–[88], applying Toga Penrith Developments Pty Ltd v Penrith City Council [2022] NSWLEC 117 (Preston CJ) at [70] and [75] — "it is not sufficient for the Court to form an opinion as to whether the proposed development does or does not exhibit design excellence by having regard to the evidence of the urban design experts alone". [Read on a judgment mirror; verify on caselaw.nsw.gov.au.] State Environmental Planning Policy (Housing) 2021 (New South Wales), sections 144–147, per Department of Planning, Housing and Infrastructure, practice note Using the Apartment Design Guide, 1 July 2026 (referral to a design review panel required for residential apartment development of three or more storeys and four or more dwellings), https://www.planning.nsw.gov.au/sites/default/files/2026-07/using-the-apartment-design-guide-practice-note.pdf — Cited at: Appendix K; response 3.1.2.

180. Environmental Planning and Assessment Act 1979 (New South Wales), section 2.18(7) ("expertise in at least one area of planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration"), as inserted by the Environmental Planning and Assessment Amendment Act 2017 (New South Wales), https://faolex.fao.org/docs/pdf/nsw176249.pdf [verify against the in-force consolidation]; Environmental Planning and Assessment Regulation 2021 (New South Wales), section 29 ("statement by a qualified designer"), https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-759 , with "qualified designer" meaning "A person registered as an architect under the Architects Act 2003" per the Department's design verification statement template, https://www.planning.nsw.gov.au/sites/default/files/2025-11/nsw-housing-pattern-book-design-verification-statement-mid-rise.pdf ; Architects Act 2003 (New South Wales), section 9, https://legislation.nsw.gov.au/view/pdf/asmade/act-2003-89 and NSW Architects Registration Board, "Protection of architect title", https://www.architects.nsw.gov.au/becoming-registered/protection-of-architect-title ; Planning Institute of Australia, "Registered Planner is the highest grade of membership at PIA", https://www.planning.org.au/pia/membership/registered-planner.aspx , and State of the Profession 2023 (25% of 1,032 respondents Registered Planners), https://www.planning.org.au/common/Uploaded%20files/PIA/news-resources/PIA-State-of-the-Profession-2023.pdf — Cited at: Appendix K; response 3.1.2.

181. New South Wales Government, Residential Flat Design Code, September 2002, foreword by the Premier, the Hon Bob Carr MP ("the establishment of a number of design review panels to assist Councils improve the design quality of development proposals"), https://www.planning.nsw.gov.au/sites/default/files/2023-03/residential-flat-design-code.pdf ; Mould P (New South Wales Government Architect), review of State Environmental Planning Policy No 65 at nine years, Architecture Australia, 10 August 2011 ("In some areas assessment has been left to council staff, who are not always well trained or too simplistic in the application of the guidelines"), https://architectureau.com/articles/stepp-65/ — Cited at: Appendix K; response 3.1.2.

182. Warringah Local Environmental Plan 2000 (New South Wales), gazetted 5 December 2000, clauses 3, 12(3) and 18(1)–(2) — 73 localities each with a "desired future character" statement and no land use zones; "nothing in a description on desired future character creates a prohibition on the carrying out of development"; "Strict compliance with development standards, however, does not guarantee that the development is consistent with … the desired future character of the locality"; the term is not defined. Council-hosted copy as amended: https://www.warringahurbanfringeassociation.org.au/_files/Files/LEP%202000%20Parts1-4.pdf ; structure per Northern Beaches Council, NBLEP Planning Proposal Appendix I, 28 May 2024. [Locate the gazetted original before lodgement.] — Cited at: Appendix K; response 3.1.2.

183. State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (New South Wales), as made 26 July 2002, Schedule 1 principles 1 and 2 ("in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2002-530 ; State Environmental Planning Policy Amendment (Housing) 2023 (New South Wales) No 664, Schedule 9 principle 2 ("appropriate to the existing or desired future character of the street and surrounding buildings"), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2023-664 ; Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales), as made (no occurrence of "character"; height objectives "must be added to this clause" by the council), https://legislation.nsw.gov.au/view/pdf/asmade/epi-2006-155 ; Department of Planning, Practice Notes PN 11-001 and PN 11-002, 10 March 2011 — Cited at: Appendix K; response 3.1.2.

184. Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 (Preston CJ, 18 August 2020) at [44] ("WLEP has not defined the meaning of the term 'desired future character'") and following; Department of Planning and Environment, Gateway determination refusing Woollahra Council's planning proposal "Interpretation of desired future character", 24 August 2022, https://www.planningportal.nsw.gov.au/ppr/withdrawn/interpretation-desired-future-character-woollahra-lep-2014 ; Gunnamatta Bay Holdings Pty Ltd v Sutherland Shire Council [2025] NSWLEC 1230 (9 April 2025) at [139], as reported by Mills Oakley, 28 April 2025, https://www.millsoakley.com.au/insights/land-and-environment-court-of-nsw-decision-in-gunnamatta-bay-holdings-adds-a-level-of-certainty-and-comfort-for-developers-when-designing-lep-compliant-das/ ; see also Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 at [22]–[31] and Veloshin v Randwick Council [2007] NSWLEC 428 at [31]–[32] (Land and Environment Court planning principles on compatibility and on height, bulk and scale). [Judgment paragraphs read on a mirror or in secondary reproductions; verify on caselaw.nsw.gov.au.] — Cited at: Appendix K; response 3.1.2.

185. Australia ICOMOS, The Burra Charter, 1999 revision, Article 22 and explanatory note ("New work may be sympathetic if its siting, bulk, form, scale, character, colour, texture and material are similar to the existing fabric, but imitation should be avoided"), full text reproduced at https://richmondvalley.nsw.gov.au/wp-content/uploads/2018/09/137815_2006_Plan_of_Management_-_Appendices_E_to_F.pdf ; The Burra Charter, 2013 revision (adopted 31 October 2013), Article 22 and note ("New work should respect the significance of a place … Imitation should generally be avoided"; the word "sympathetic" does not appear), https://burramoontaworldheritage.com.au/wp-content/uploads/2024/05/The-Burra-Charter-2013.pdf ; Australia ICOMOS, Practice Note — Burra Charter Article 22 New Work, November 2013; Heritage Act 1977 (New South Wales) (neither "sympathetic" nor "infill" appears), https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1977-136 — Cited at: Appendix K; response 3.1.2.

186. NSW Heritage Office, NSW Heritage Manual, Statements of Heritage Impact (1996) ("Is the new development sympathetic to the heritage item?"; "The Heritage Council does not advocate the reproduction of heritage forms and finishes"), council copy at https://www.dungog.nsw.gov.au/files/assets/public/v/1/building/1858-statementofheritageimpact.pdf ; NSW Heritage Office, Local Government Heritage Guidelines, March 2002, pp 29–30, https://www.environment.nsw.gov.au/sites/default/files/local-government-heritage-guidelines.pdf ; NSW Heritage Office and Royal Australian Institute of Architects (New South Wales Chapter), Design in Context: Guidelines for infill development in the historic environment, 1 June 2005 ("Nor should new development directly copy the architecture of the existing buildings"), https://www.environment.nsw.gov.au/sites/default/files/design-in-context-guidelines-for-infill-development-historic-environment.pdf ; Leichhardt Development Control Plan 2013, Part C section C1.4, objective O1(i), https://www.innerwest.nsw.gov.au/sites/default/files/2026-03/Leichhardt%20DCP%202013%20-%205%20-%20%20Part%20C%20Place%20Section%201%20-%20with%20IWLEP%202022%20amendments%20March%2023.pdf ; Spennemann D H R, "What Actually Is a Heritage Conservation Area?", Heritage 6(7): 279 (2023), section 5.2.1, https://www.mdpi.com/2571-9408/6/7/279 ; Ministry of Housing, Communities and Local Government (United Kingdom), National Planning Policy Framework, chapter 12 ("sympathetic to local character and history … while not preventing or discouraging appropriate innovation or change"), https://www.gov.uk/guidance/national-planning-policy-framework/12-achieving-well-designed-places — Cited at: Appendix K; response 3.1.2.

187. Central Sydney Local Environmental Plan 1996 (New South Wales), clause 12(i) as substituted 3 March 2000 ("the achievement of a high quality of urban form and design in buildings"), consolidation as at 25 May 2005, https://legislation.nsw.gov.au/view/whole/html/inforce/2005-05-25/epi-1996-0665 ; Sydney Local Environmental Plan 2012 (New South Wales), clause 1.2(2)(j), as made 14 December 2012, https://legislation.nsw.gov.au/view/pdf/asmade/epi-2012-628 ; Strathfield Local Environmental Plan 2012 (New South Wales), clause 1.2(2)(a), 15 March 2013, https://legislation.nsw.gov.au/view/pdf/asmade/epi-2013-115 ; Draft Inner West Local Environmental Plan 2020, clause 1.2(2)(i), version submitted to the Department 26 May 2020, https://hdp-au-prod-app-innerwest-yoursay-files.s3.ap-southeast-2.amazonaws.com/2916/5450/7455/Inner_West_LEP_2020__submitted_to_Department_of_Planning.pdf ; Inner West Local Planning Panel, 8 March 2022, Item 7, DA/2021/0816, 141 Bedford Street Newtown ("not considered to promote a high standard of design, contrary to aim i)"), https://www.innerwest.nsw.gov.au/sites/default/files/2026-05/8%20March%202022%20IWLPP%20Agenda%20-%20VOL%201%20-%20Item%207%20(1).pdf ; Inner West Local Environmental Plan 2022 (New South Wales), section 1.2(2)(g); Marrickville Local Environmental Plan 2011, Leichhardt Local Environmental Plan 2013 and Ashfield Local Environmental Plan 2013 (New South Wales), clause 1.2 (as made; no "urban form"); Environmental Planning and Assessment Act 1979 (New South Wales), section 1.4, definition of "development standard"; Government Architect New South Wales, Better Placed (2017) and Good Urban Design (2019) (no definition of "urban form") — Cited at: Appendix K; response 3.1.2.

188. Department of Planning, Housing and Infrastructure (New South Wales), Low-rise housing reforms and targeted assessment — Discussion paper, May 2026 (exhibited 14 May to 24 June 2026), pp 22–27 ("Each numerical standard would be accompanied by a set of objectives"; "an objectives-based approach would reduce ambiguity for applicants and consent authorities, limit opportunities for lobbying or selective intervention"; core standards "would replace many existing DCP controls"; the word "character" does not appear), https://www.planningportal.nsw.gov.au/sites/default/files/documents/2026/Low-

rise%20housing%20reforms%20and%20targeted%20assessment%20-%20Discussion%20paper%20final.pdf — Cited at: Appendix K; response 3.1.2.

189. Local Government Act 1993 (New South Wales), section 377 (general power of the council to delegate — to the general manager or any other person or body, not including another employee) and section 378 (delegations by the general manager — sub-delegation "to any person or body (including another employee of the council)"); no qualification imposed on any delegate. https://classic.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/s377.html (accessed 2 September 2026). — Cited at: response 3.1.2.

190. Building and Development Certifiers Act 2018 (New South Wales), section 5 (certification work requires registration; exemption for councils as entities only), section 26 (registered certifiers to be indemnified), sections 28–30 (conflicts of interest; private and pecuniary interest), sections 45 and 48 (grounds for and forms of disciplinary action, including suspension, cancellation and disqualification). https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2018-063 (accessed 2 September 2026). — Cited at: response 3.1.2; Appendix K, section 11.2.

191. Design and Building Practitioners Act 2020 (New South Wales) (registration of design and building practitioners and professional engineers); Home Building Act 1989 (New South Wales) (licensing of residential building work); Architects Act 2003 (New South Wales), section 9 — the statutory registers applying to every participant downstream of a development consent. — Cited at: response 3.1.2.

192. Evidence Act 1995 (New South Wales), section 79(1) ("If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge"); Uniform Civil Procedure Rules 2005 (New South Wales), Schedule 7 (Expert witness code of conduct), applied in the Land and Environment Court of New South Wales. https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/ea199580/s79.html (accessed 2 September 2026). — Cited at: response 3.1.2.

193. Environmental Planning and Assessment Act 1979 (New South Wales), Schedule 1, clause 20 (public notification of the decision, its date, "the reasons for the decision (having regard to any statutory requirements applying to the decision)" and how community views were taken into account; subclause (3): the reasons requirement "may be satisfied by reference to any document that contains the reasons for decision"); Environmental Planning and Assessment Regulation 2021 (New South Wales), section 88 (content of notice of determination — reasons required for a refusal, subsection (1)(b), and for conditions, subsection (1)(c)(ii); no reasons required for the grant itself). https://classic.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/sch1.html ; https://classic.austlii.edu.au/au/legis/nsw/consol_reg/epaar2021480/s88.html (accessed 2 September 2026). — Cited at: response 3.4.6a.

194. Land and Environment Court of New South Wales, Schedule of Court Fees effective 1 July 2026 — Class 1 appeal filing fee for a corporation where the estimated cost of development exceeds $1 million: $9,314 (verified 31 August 2026). Legal and expert cost ranges from the applicant's solicitors' costs agreement and estimate of 31 August 2026 (author's project file; firm not named). — Cited at: Appendix C, sections 4.2 and 4.3.

195. Sydney Development Control Plan 2012 (New South Wales), section 3.9.1(6) (substantial demolition of a contributory building: heritage impact statement to demonstrate incapacity for retention or re-use; quantity surveyor's cost comparison where economic grounds relied on; structural engineer's condition report where condition relied on; pest inspection for weatherboard buildings). Delegated consent and assessment report of an inner-Sydney council, 2025, on the author's project file (de-identified; obtained from the New South Wales Planning Portal, August 2026). — Cited at: Appendix H; response 2.3.

Copies of all cited sources are archived in the project References folder, per the author's record-keeping conventions.

APPENDICES — the evidence in full

The appendices detail the evidence sections of this submission. They retain the section numbering used in Part Two's cross-references, so that a reference to "section 4.2" in a response points to section 4.2

within Appendix C. Figures in the appendices continue the single figure sequence used in the main document.

Appendix A — A system no one sees whole (section 2)

2.1 The map as a builder carries it

In 2024 I was asked in a high level meeting with industry drivers, “what is required to get a single house built in New South Wales ?”. There was scepticism in the meeting that it was difficult process, that it was just a reasonable set of necessary hurdles to be jumped over by skilled professionals as part of an accepted process. Figure 1, at the opening of this submission, is the frightening and shocking initial rough outline answer, drawn in a single sitting. I tried to recollect every Act, planning instrument, authority, consultant, certificate, insurance and payment control I have had to deal with over the last decade or two, arranged around the path any family must take from a decision to make their place to a finished family home.

When I began building in southern Tasmania in the late 1970s there was very little in the way of the bureaucratic entanglement we have today. Development Applications were required but achieving compliance was considered minor and relatively predictable, a box to tick, along with building approval before the real work of building commenced. Urban planning was in its early stages as a secondary role in local councils for managing the emergence of large-scale inner-city buildings. The Building Code of Australia did not exist — it arrived in 1988 and local building inspectors were experienced, sensible ex-builders who understood what was needed to get a safe and practical build done and weren’t afraid to give sound advice or act if things weren’t right. The accretion of rules, regulations and compliance requirements has been continuous ever since. As has been the emergence of the professional indemnity and home warranty insurance industry which currently controls the industry. It is not that any individual regulation, rule, standard or compliance requirement has been particularly unreasonably negative or unnecessary; it is the accumulated effect of five decades of incremental loading up of the industry. Nothing in the mud map splash figure below is invented and nothing is duplicated. And there are also many things missing that could be added in — remarkably, even that ridiculous jumble facing all builders isn’t everything.

2.2 The same map, systemised

Figures 7 and 22 formalise the same content, as did the NSW Premiers office after I discussed it with their senior housing staff. Figure 7 arranges every element into five lanes — finance, legislation, authorities, consultants and builder obligations — around the process spine that runs from the people and their (almost always naïve) decision to proceed into the process expecting the finished building to magically appear. Figure 22 restates it as a flowchart: decision gates as diamonds, with the rules and authorities that govern each gate descending from above and the reports, fees and obligations each gate demands rising from below.

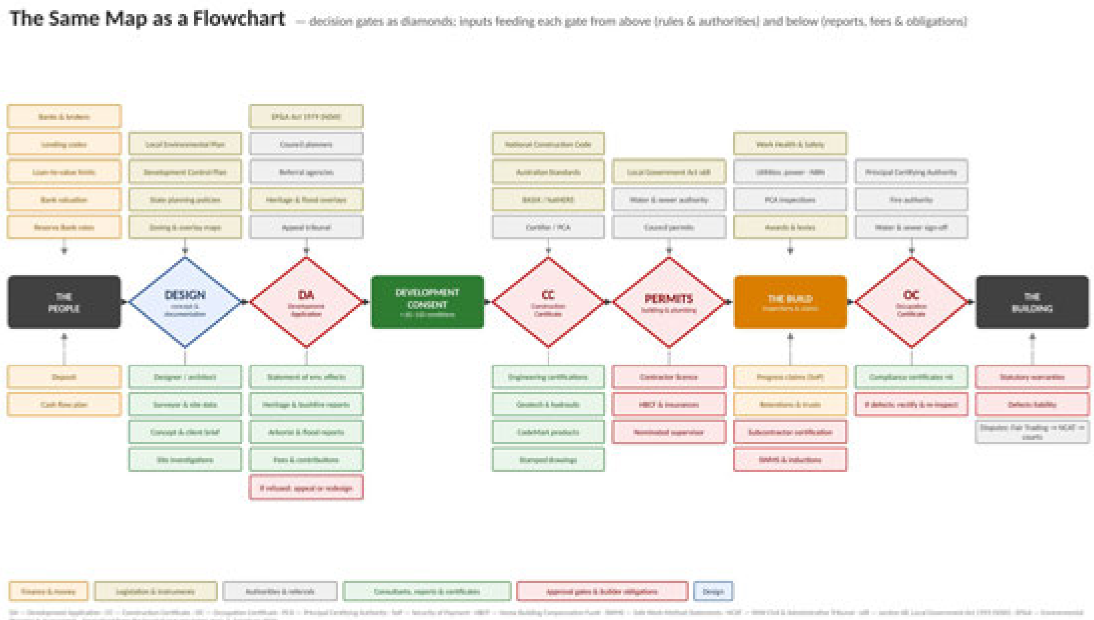

Figure 22 — The map as a flowchart: each gate is fed from above by rules and authorities and from below by reports, fees and obligations.

The point of showing the raw drawing before the formalised ones is that both are real representations. The Raw Version shows the daunting mash of regulations, controls, compliance and legal penalties that faces those involved in building every day. The tidy versions demonstrate that the burden can be systemised — programmed, even; made into a logical algorithm that can be worked through — and that observation carries the clear but uncomfortable implication: navigating the systemised chart is a desk profession. It is coordination, document control and statutory interpretation — office work.

As it stands now, the system is far too complex for any builder or owner to navigate and requires the equivalent of a full-time administrator per project; yet in New South Wales at least and likely all other states, the businesses expected to supply that administration are overwhelmingly very small — industry data indicates around 98.7% of construction businesses employ fewer than 20 people, most have only two to three employees, many are sole practitioners — and those small builders construct roughly three quarters of Australia's dwellings. So the administrator navigating the complexities of the convoluted byzantine maze of the systems and the builder hammering on the roofing are usually the same person, doing the paperwork between concrete pours and berating suppliers and trades and late into the nights. This is a large part of the flattening of productivity in the construction industry: the time increasingly spent on administration and compliance by builders closely maps and counterweights the time reductions from technological improvements in construction and servicing systems that would otherwise be evident as productivity increases in the industry.

2.3 A burden reviewed only in pieces

No body in Australia currently assesses, prices or even catalogues the regulatory load on a single home build, as the builder actually experiences it — in aggregate, across planning, building, consumer, safety, industrial, legislative, licensing, business and taxation instruments all at once. The review landscape itself illustrates the gap. At the time of writing, at least five separate processes are examining parts of this system concurrently, with no interaction or integration: this inquiry (land-use controls, approval processes and enabling infrastructure); the Treasury-led National Construction Code Modernisation Project (the code itself, designated expressly out of scope here); the Australian Building Codes Board's national voluntary certification scheme for manufacturers of modern methods of construction; New South Wales's Building (Approvals and Practitioners) Bill 2026; and the Commission's own 2010 and 2025 research papers on housing construction productivity. Each is worthwhile. Each has scope boundaries that exclude the others. A system reviewed only in silos will be reformed only in silos, and the builder is the only participant who experiences the whole of it at once. And therein lies the rub.

For context — the National Construction Code being out of scope for this inquiry — which goes to the breadth of the problem for the industry – nothing is coherently coordinated across all the various factors affecting the industry, and there is no oversight scope. The technical layer alone conveys the scale: the code and its predecessor have been amended and updated almost every year at least once, and at times many times, since 1988, and the 362 Australian Standards it directly calls up, and the other standards they call up, run to tens of thousands of pages across electrical, plumbing, structural, timber, concrete, masonry, bushfire, glazing and many other disciplines. Within this inquiry's scope, the planning layer is comparably heavy: a 2024 survey by the property-data firm PropCode counted more than 75,000 pages — nearly 20 million words — across the various New South Wales councils' development control plans, the largest single one (Tweed Council) running to 3,762 pages. These instruments all bind simultaneously.

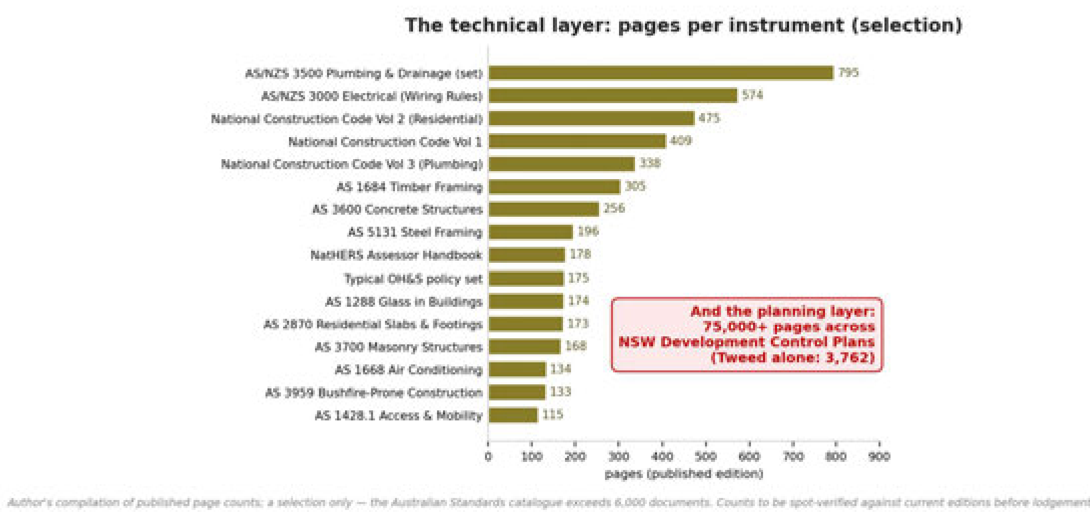

Figure 23 — The technical layer by published page count (selection), with the planning layer's 75,000+ development control plan pages alongside. Author's compilation; counts to be spot-verified before lodgement.

The Numbers. Standards Australia maintains a catalogue of approximately 7,500 Australian Standards. The National Construction Code 2022 calls up more than 120 of them directly as primary references — the preview draft of the 2025 edition lists 176 primary referenced documents — and those primary references call up thousands more as secondary references. No authority publishes a definitive list of the standards that apply to building work, nor their combined length: to establish either for this submission, the author had to reconstruct the list from a commercial vendor's product listing. On the author's stratified estimate, anchored to eight page counts verified from vendor listings, the directly referenced standards run to roughly 27,000 pages — about ten times the length of the Code that calls them up — before a single secondary reference is opened. One timber-framing standard alone carries some sixty separate span-table supplements.

Until this year, every one of those pages sat behind a paywall. The lowest-cost compliant access, a commercial “NCC Primary References Set”, is $1,202 per annum per business; Master Builders Australia calculates the industry-wide access cost at more than $131 million per annum. The Federal Budget 2026–27 has now committed $42.7 million over four years for free public read-only access to standards referenced in Commonwealth, state and territory legislation — a welcome and overdue reform, and an instructive one: it arrived five decades into the accumulation, and it resolves reading, not use and integration into plans and specifications and installation instructions. Read-only access does not of itself permit a builder to reproduce a span table into project documentation, and secondary referenced standards not specifically named in the upcoming legislation appear likely to remain behind the paywall. This history is offered as evidence of what happens when no specific body is charged with watching a system’s cumulative weight. And there is no research anywhere on what sort of time and stress and anxiety burden this immense mass of documentation and legally binding regulation places on builders and the effects on their productivity – in terms of directly getting buildings built.

OH&S. The work health and safety layer sits on top of all of the above, and it repeats the pattern. It is not one system but eight: the model Work Health and Safety Act 2011 framework operates in every jurisdiction except Victoria, which retains its own Occupational Health and Safety Act 2004 (Victoria), and Western Australia joined the model scheme only in 2022 — so a builder working across a state border runs two legal systems at once. For a small residential builder the standing requirements include safe work method statements for eighteen defined categories of high risk construction work; a work health and safety management plan on any project of $250,000 or more ($350,000, and a differently named plan, in Victoria); general construction induction cards; high risk work licences; plant registrations; scaffolding and working at heights, asbestos, demolition, lead, silica and explosives notifications, test and tag requirements for power tools, each running on its own clock — immediately for serious incidents, five days for licensed asbestos removal and for demolition in New South Wales, annually for legacy engineered stone. Around nineteen codes of practice and some forty Australian Standards service this layer. Almost none of the documentation is lodged with any authority: it is prepared, maintained and held for inspection — which is precisely where the hours go.

The time cost is real but essentially unmeasured. The Housing Industry Association’s small business survey of April 2026 found more than half of small builders spending at least five hours every week on regulatory tasks, nearly one third spending more than ten, and over half reporting that they had hired new staff or reassigned existing staff specifically to carry the administrative load. Significantly increasing their overheads costs which have to be passed on to consumers. No published study isolates the safety-documentation share of those hours. From this author’s own practice — a commercial safety management system, 4 binders thick, many thousands of pages, purchased from the Housing Industry Association in 2015 and extensively customised since — consumes many hours in every week, across method statements, inductions, registers, toolbox talks and compliance records and subcontractor documentation verification and recording. Not to mention the Workplace safety requirements if an accident actually occurs. That can take many many hours to work through and ensure the worker gets through it all and back to work in good health. No one comes to work to get hurt and the value of all these is unquestioned and it has helped reduce the number and the severity accidents in the construction industry – but there again is the intrinsic and much cited productivity decline. All this takes thousands of hours away from the process of construction. The peer-reviewed literature on safe work method statements documents the drift from risk control into paperwork produced for its own defence, and has a name for it: “safety clutter”. The point is not that safety regulation is unwarranted. It is that a burden nobody measures is a burden nobody is accountable for.

Appendix B — The industry asked to carry it (section 3)

Two verified indicators describe what the load is doing. In 2023–24 the construction industry recorded 2,975 companies entering external administration — 27% of all corporate failures in Australia, the largest of any industry segment, in a year when failures overall rose 39% (Australian Securities and Investments Commission, July 2024). In the same year the New South Wales Civil and Administrative Tribunal’s Consumer and Commercial Division received 2,741 home building applications and finalised 2,964. These are not measures of poor workmanship; they are measures of an industry operating without margin for error inside complex legal and regulatory systems that supply error generously and offer very significant financial gains for serial litigants.

The dispute layer beneath those indicators is now partially measurable, thanks mainly to Victoria’s Auditor-General: a survey there found one in four, 25%, of all residential builds involves a dispute between owner and builder; about 6.3% of permitted projects reach the state’s mandatory conciliation gateway each year (an average of 5,780 cases annually against 92,158 domestic building permits, peaking near 8,000 cases in 2022–23); and roughly one project per 67 to 78 permits — 1.1% to 1.5% — proceed to the tribunal. Queensland’s regulator cites a comparable stream: 5,771 defective building work complaints and 1,223 directions to rectify in 2024–25. In fairness, the New South Wales tribunal numbers are trending down — 2,870 home building applications in 2022–23, 2,741 in 2023–24 and 2,409 in 2024–25. What no government publishes is the aggregate: no national body counts building disputes across forums or jurisdictions, so the conflict the regulatory system generates is — like its page count and its safety hours — unmeasured by the bodies that administer it.

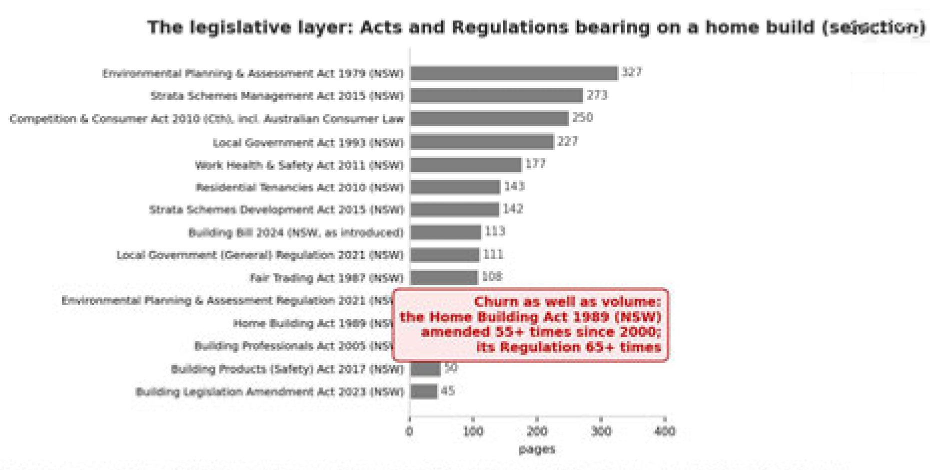

Figure 24 — The legislative layer by published page count (selection), with amendment churn noted. Author’s compilation; counts to be spot-verified before lodgement.

Appendix C — What the burden looks like on a real project (section 4)

4.1 The cost stack

From our own project records, generally for small Class 1 buildings — cabins and modest pod dwellings — our best estimate is that some **63%** of the total cost of delivering a small residential building is **not the building**: design costs, reports and approval fees, development contributions, taxes, compliance certifications and licences, insurances, and product, materials and business certification. The estimate is the author's own, derived from disaggregating project accounts across recent small projects, and is offered on that basis.

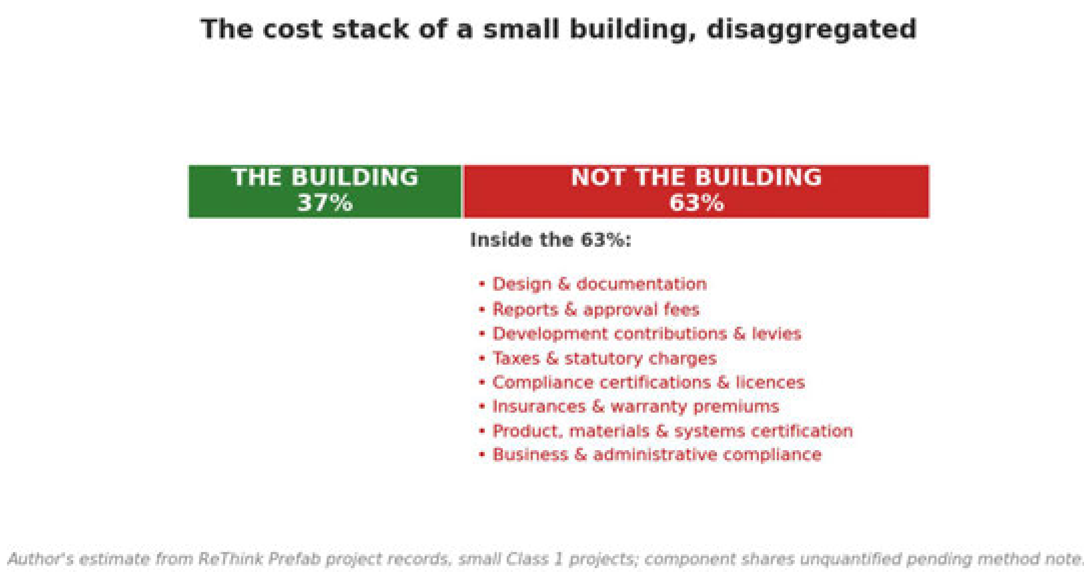

Figure 25 — The cost stack disaggregated: the components inside the 63%. Component shares unquantified pending the method note.

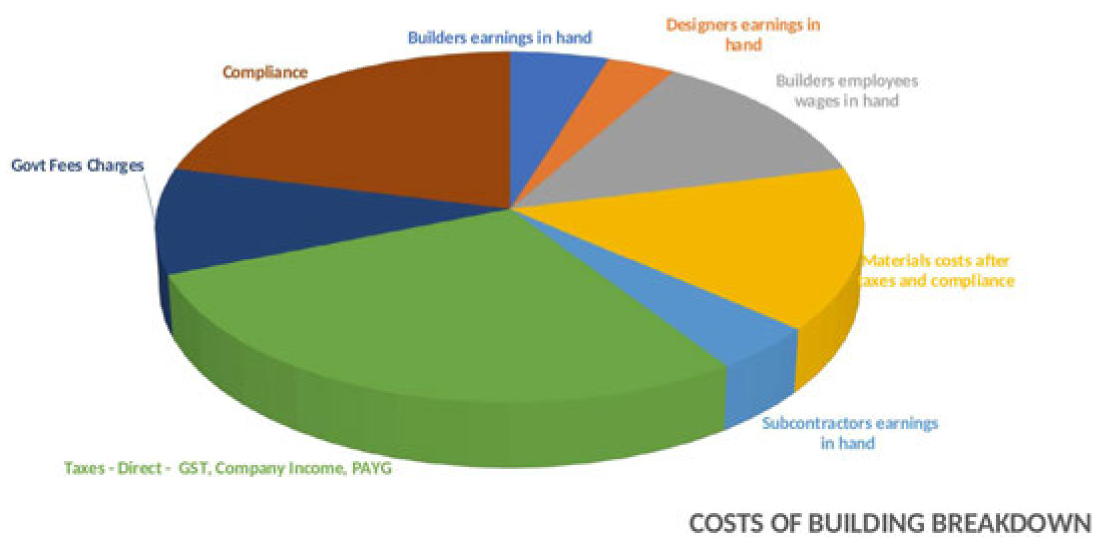

Figure 26 — Costs of building breakdown: the author's simple allocation of the delivered cost of a small residential building, from the author's conference presentation. The fully disaggregated version is Figure J1, Appendix J (page 112).

4.2 Case study: a two-dwelling infill project

We lodged a development application for clients for a small infill project in an inner-Sydney heritage conservation area located within an area identified by state and local government strategy for beneficial residential growth. The proposal was for modest alterations and additions to an existing cottage, and one additional dwelling on the adjoining separate vacant title. Two terrace-form dwellings in total, of a scale consistent with the surrounding terrace pattern. In mid-2026 the application was refused under section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (New South Wales) on twenty stated grounds, spanning the applicable local environmental plan (aims of the plan, floor space ratio, heritage conservation, flood planning and design excellence) and the applicable development control plan (locality character, tree management, flood management, five separate heritage provisions, solar access, landscaping, visual privacy, alterations and additions, rear roof extensions and laneway dwellings). The author acts as project manager for the applicant and declares that interest.

Four features of the application's treatment bear on the Commission's questions.

First, a substantial number of the grounds rest on qualitative judgments — *"design excellence"*, *"high-quality urban form"*, *"sympathetic infill",* compatibility with *"desired future character"* — all subjective assessments that reduce certainty. It is clear that an applicant cannot design to a standard that is determined only after lodgement, by a delegated planner without discussion or review or interaction.

And then the question emerges as to what the definition of design excellence is and the measure of the design and the qualifications of the arbiter to make the decision that is made by planners as to whether Design Excellence is met.

The answer, traced to its source, is that there is none. Neither the Environmental Planning and Assessment Act 1979 (New South Wales) nor the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) defines "design excellence", and no court has. In the applicant's own instrument, the Inner West Local Environmental Plan 2022 (New South Wales), the only operative design excellence provision is section 6.9, which applies only to a building "equal to, or greater than, 14m in height"; the phrase otherwise appears only as an aim of the plan (section 1.2(2)(g)), with no test attached. The Government Architect's own advisory note describes the term as "connected to project prominence" and requiring a process "often a design competition". Where the term does operate it is assessed and never measured: the test is the consent authority's opinion, held by the Land and Environment Court to be a jurisdictional fact (Toga Penrith Developments Pty Ltd v Penrith City Council [2022] NSWLEC 117); panels are advisory, competitions are decided by consensus or majority vote, and no scale, threshold or pass mark exists anywhere in the system. Appendix K sets out the origin of the term, its spread to dwellings, and the absence of any qualification requirement for the officer who applies it.

Second, the refusal included a flood planning ground asserting "unreasonable risk to life and property", notwithstanding that the consent authority's own flood information certificate for the site records it as lying outside the 1% annual exceedance probability event, in the lowest hydraulic hazard category in all events, with the proposed floor level above even the probable maximum flood level.

Third, the cost stack: the refused application cost tens of thousands of dollars to prepare, with dozens of reports and drawings and significant lodgement fees. An appeal costs more again: on the applicant's solicitors' estimate, a Land and Environment Court filing fee of $9,314, legal costs of $26,000 to $34,000 to and through the conciliation conference, expert allowances of about $25,000 for each of the planning and heritage disciplines, and about $165,000 excluding GST in total if the matter runs to a hearing. And the threat that under the applicable affordable housing contribution provisions the project as lodged carried a levy exposure approaching $200,000 — on a simple, modest cottage renovation and new terrace home infill project of about 130 square metres each — not excessive, sprawling luxury homes — treated by council the same way as a multi-storeyed commercial development.

Fourth, the manner of determination: three weeks before the refusal, the consent authority wrote to the applicant stating that the application "should be withdrawn" within seven days, failing which it would be determined on the information as lodged. No negotiations or discussions on the project were undertaken. No invitation to submit further reports or amended plans accompanied the letter. The application was then refused without further discussion or notification.

The DA public notification arithmetic deserves its own line. Because the site lies within a heritage conservation area and the proposal involved substantial demolition of a contributory building, the consent authority's community participation plan placed the application in its widest consultation category: 28 days of exhibition and letter notification to every property within 75 metres — 570 properties in all — against the 14 days and 25 metres that would have applied to the same two dwellings outside the conservation area. No reasoning is given for the council's decision to cast so broad a net. Five objections were received: fewer than one per cent of the properties notified. The two attributable objections came from the immediately adjoining neighbours on either side, one of which was professionally drafted by an engaged planning consultant. The wide net caught nothing that the adjoining properties did not already hold — yet the application could not lawfully be determined until the longer period expired, and every submission became material the assessment was obliged to process.

Since this case study was first prepared, documents obtained under the Government Information (Public Access) Act 2009 (New South Wales) have put the determination practice on the record in the authority's own words. The specialist heritage referral advice on the application concludes:

> *"Given the extent of changes needed to make this application acceptable, which has not been done following the pre-DA advice, refusal is recommended to ensure planning timeframes are met."*

[Redacted]

> *[Redacted]*

> The sign-off request for the determination then states:

> *"Withdrawal letter was sent 27/5. Applicant declined to withdraw, hence the refusal recommendation."*

No negotiation or request for amended plans was issued at any stage of the assessment. No officer is named here and no motive is attributed to any individual; the documents are quoted because they record, in the authority's own words, a determination pathway in which meeting planning timeframes was an express consideration in recommending refusal rather than negotiation.

The documentation the project generated speaks for itself. Before lodgement: a formal pre-lodgement advice process. At lodgement: approximately twenty-five documents across some twelve disciplines — the application form, a statement of environmental effects, a statement of heritage impact, a flood risk management report, a geotechnical report, a structural footing design report, a boundary identification survey, separate site surveys and title searches for each of the two lots, the architectural drawing set, site plans, shadow diagrams, a notification plan, a materials and finishes schedule, an energy efficiency assessment and Building Sustainability Index certificate for each dwelling with separately stamped sustainability drawings, a condensation report, a waste management plan per dwelling on the council form, a utility services diagram, owners' consent forms, a certificate of responsible designer, a development cost summary, company registry searches, a landscape plan and tree management plan, and the fee records. During assessment: an additional-information request, response letters, an arboricultural impact assessment, Materials and fitout schedule and amended plans and specifications. Then, generated so far by the decision to appeal the council's determination: a legal retainer and staged advice, briefs to four expert disciplines and a town planner, a flood report addendum, the authority's flood information certificate, further survey verification, two formal government information access applications, an eighty-year historical title abstract, archival research, precedent research and floor space reconciliation calculations. In total: in the order of fifty documents, reports, certificates and formal instruments, engaging more than a dozen professional disciplines, and many tens of thousands of dollars in costs - before a single trade attends the site, if that ever happens.

Whatever the outcome of the appeal, the pathway adds an estimated twelve months and a six-figure sum to a two-dwelling project — costs ultimately borne by the housing consumer or potentially significant enough to prevent the addition of new infill housing in a much sought after high amenity area. This is housing the country has clearly and continually stated it critically needs — stopped by council planning on subjective grounds, and refused on a pathway in which, on the authority's own record, meeting planning timeframes was an express consideration; the appeal stage that follows sits outside the league-table record.

4.3 The spread of assessment performance

The variation in council performance makes the certainty problem concrete. The New South Wales Government's council league tables for 2023–24 record the slowest council **averaging** 256 days per development application determination and the fastest averaging 20 — a thirteen-fold spread within a single state under identical legislation. The Statement of Expectations Order 2026 now sets expectations of 90 days for 2026–27, 80 days for 2027–28 and 65 days from 1 July 2028 (the prior expectation was 105 days); the reform direction is welcome, and the distance between the expectation and the recorded extremes is itself a measure of the problem.

The Land and Environment Court of New South Wales puts hard numbers on the litigation this uncertainty produces. In 2024 the Court registered 979 Class 1 environmental planning appeals. About 70% of the Class 1 matters it finalised were development application appeals under section 8.7 of the Environmental Planning and Assessment Act 1979 (New South Wales) — and 58% of those were "deemed refusal" appeals, commenced not because the consent authority said no but because it said nothing within the statutory period. The majority of development litigation in this state is manufactured by non-decision.

The money involved is substantial and, characteristically, uncounted. From professional experience, and consistent with the section 4.2 case study — whose appeal costs run to six figures once expert reports, filing and holding costs are included — a Class 1 appeal costs its applicant in the order of $50,000 to $90,000 if resolved at the conciliation conference, and $150,000 or well beyond if it proceeds to hearing. Class 1 spans everything from a single dwelling renovation through two-dwelling infills to major residential and commercial residential projects, where per-case costs typically run to millions, so those averages are conservative. On those figures, the applicant side of the 2024 caseload alone represents in the order of $35 million to $100 million in New South Wales in a single year; the consent authorities' defence costs — external solicitors, counsel and their own experts — are of a similar order; and the public funding of the Court on top of all that. Scaled by New South Wales's roughly one-third share of national dwelling approvals, planning-appeal litigation plausibly consumes close to a billion dollars a year nationally — every dollar of it ultimately added to the cost of housing, and none of it reported by any government as a cost of the system. These are the author's estimates; the method is stated because no official figure exists. One structural observation belongs beside the numbers: the decisions being appealed are made by delegated assessment officers whom the system does not require to hold any construction qualification or site experience, and council internal consultants who aren't required to hold any qualifications or formal experience and who make decisions in fields such as flood hydraulics or geotechnical engineering, or architecture, in which they hold no qualifications or experience and the appeals are then argued through lawyers and highly qualified and experienced expert witnesses at rates that can exceed the actual construction costs of building the disputed work. A system that made deciding cheaper than not deciding p or assigned a cost to those decisions — and put design and construction experience inside the planning assessment room — would shrink this entire layer.

The incentive structure explains more than any individual's conduct could. The council league tables and the Statement of Expectations Order measure councils on days to determination. A refusal stops that clock; an amendment negotiation keeps it running; and the months or years that follow in appeals and section 34 conciliations appear in no council's published assessment times. The metric, as presently constructed, rewards early determination by refusal and transfers the elapsed time — and the cost — to the applicant and the Court, where neither is measured. Professionals in the author's working networks widely read current council practice this way; the Commission need not rely on that perception, because the documents quoted at section 4.2 record the consideration operating in a live assessment. If governments measure only the segment of the clock a council controls, councils will optimise that segment. The whole-clock and determination-practice metrics proposed at information request 3.4.4, are the corrective.

I have personally been putting together planning development applications for over forty years and they number in the hundreds. I hold higher education degrees in architecture and construction and have studied and registered for many of the consultancy disciplines needed these days for development submissions. And I still cannot guarantee that a development application will be approved. It has become an increasingly unstable and risk-laden gamble, with costs and time delays skyrocketing. It seems to us that the likelihood of getting a reasonable response from council is dependent on the personal viewpoint and emotional state of the delegated planning officer and whether they have had their morning tea. That is madness — and whatever allowance is made for my own potential failings, a system in which a highly experienced, multi-credentialed practitioner cannot predict the outcome is a system that has stopped being a set of defined rational clear rules and become a lottery.

Appendix D — Prefabrication: the productivity gain blocked at the gate (section 5)

The Commission's interim report (chapter 3, box 3.2) documents, through a case study supplied by prefabAUS, how approval pathways designed for on-site construction penalise factory-built housing: a modular knock-down-rebuild approved only after thirteen months, partly because the council processed it as a standard build rather than under the pathway in section 68 of the Local Government Act 1993 (New South Wales) — a pathway originally designed for manufactured home parks and caravan parks rather than permanent homes — with larger setbacks, a forced redesign, and two separate sets of approvals and certification.

Our experience across some 250 factory-built pod dwellings over twenty-five years is that that case is representative, not exceptional. Three structural frictions recur. First, classification: the approval pathway under section 68 of the Local Government Act 1993 (New South Wales) is routinely misapplied or misunderstood by consent authorities for permanent prefabricated dwellings on private land. Second, sequencing: certification frameworks assume an inspector can view open frames and services in place on site at mandated stages; a finished module arriving on a truck defeats that assumption, and the response of the system is duplication — two approval and certification sets for hybrid factory-and-site builds — rather than adaptation.

Third, finance: and this is critical and hard for government legislation to shift, though the market is managing to demand better products and at least some of the banks are now starting to respond with prefabricated building financing systems. Traditional bank progress-payment templates release funds at slab, frame, lockup and completion; a dwelling that is 80% complete in a factory fits none of those gates, so the most productive construction method in the industry is also the hardest to finance. Manufacturing is, as other industries demonstrated decades ago, the reliable route to scalability, eliminating defects and increasing productivity and production rates; the regulatory and financial scaffolding around housing has not yet been able to respond to this potential solution to the current Housing Crisis.

It is a conceivable pathway that an Authority may become the interim financing underwriter between the owner's deposit and the finished building then formally and contractually hand over financing to the owners selected institution on the issue of occupation certification.

Appendix E — The untested assumption — a core argument (section 6)

The proposition. Regulation is the binding constraint on supply response. No change to interest rates, construction techniques, Capital Gains tax, negative gearing or migration will cause a four storeyed terrace to be built where that terrace is prohibited. There is a deeply hidden untested assumption that what we have now is what we should have and that is what should stay. That assumption must be brought out into the light of day and carefully and rationally analysed and reassessed. If that is what society decides it wants, then so be it: we will have to live with the consequences for the next century or two. If there is the will to re-make our cities and grow into a mature urban culture then that could well lead to resolving the current crises.

Every residential development standard in New South Wales rests on an assumption that is never stated, never tested and never verified: that **what is already built on a site over the last century or more, through historical accident, before planning emerged as a thing, is the correct measure of what should be permitted there**, and that the existing low-density, detached, one-and-two-storey housing form and the medium density one and two storey terrace housing built as workers tenements, often for tithed workers or by British gentry landlords for rental income from the colonial masses, at minimal cost and quality of build, with no contemporary technologies, limited access to materials, or energy efficiency strategies or an Australian environmental design sense, is therefore good, and that preserving it is therefore good. It is directly stated nowhere, argued nowhere and supported by no published derivation or serious investigation. It simply operates as an assumed core reasoning and has done for seventy five years since the County of Cumberland Planning Scheme introduced land-use zoning to New South Wales in 1951.

Statements of desired future character under their many guises establish the status quo almost ubiquitously as what is wanted, without any questioning of why that is so. Building height, Floor Space Ratio and heritage controls are developed solely to back that stated desire. There is no published derivation, no modelling and no stated method behind the underlying assumption. Nor is there any controlled or quasi-experimental testing of whether those mechanisms produce a more desirable outcome for anyone. We asked whether any Australian planning scheme, heritage area restriction, floor space ratio control or building height limit has ever been tested on its outcomes — by cost-benefit analysis, resident satisfaction, or any comparable method — and we could not locate it. The methods exist and are well established. They have simply never been applied here. Where they have been applied overseas they work, and this Commission has already noticed: Box 1.3 of the interim report is a case study of the Auckland Unitary Plan, under which approximately three quarters of Auckland's residential land was upzoned in 2016.

6.1 The key finding

We could not locate any Australian planning instrument that has ever been evaluated after the fact against its own stated objectives. Not a Local Environmental Plan, not a Development Control Plan, not a Heritage Conservation Area value assessment has been reviewed for its success or otherwise, that we could find, after three or four decades of 'protection'. Planning may be the largest body of Australian regulation with no evaluation requirement, no post-implementation review, and no outcome measurement of any kind. We can though conjecture one highly visible outcome of these policies — a housing crisis, around the nation, in every city and town. And it is readily quantifiable: thousands upon thousands of appeals and court cases, and billions of dollars in wasted reports, legal fighting and delayed projects.

6.2 The circular assumption

The assumption is visible in the documents. Where a council has published its working, the working is to measure what exists. Northern Beaches Council set its low-density floor space ratio by analysing **2,177 development applications lodged between 2011 and 2022 and adopting the seventieth percentile** — the existing built form, converted into a legal ceiling. The only recorded validation of the ubiquitous 8.5-metre height standard is that the Housing Code was *"tested on pre-existing housing stock."* Development control plans state existing character and restate it as policy: Bayside Council describes the Pagewood precinct as *"one and two storey detached dwelling houses"* and, on the facing page, sets the desired future character as *"**Retain** … one and two storey detached dwelling houses."* Inner West Council defines front setbacks as the **arithmetic average of the two adjoining buildings**. North Sydney's character statements, governing built form in 2026, derive from a study undertaken in **1998**.

Nothing in the system tests it. The Standard Instrument contains no density number and no method for setting one; clause 4.4(1)(a) is a blank for each council to fill. Neither merit test in the *Local Environmental Plan Making Guideline* requires a height or floor space ratio to be justified by evidence, and one expressly directs the assessor to "existing uses, approved uses, and likely future uses of land in the vicinity." Infrastructure capacity enters only as a servicing check on a number already chosen. The term against which the number is finally tested — "character" — **is not defined in any New South Wales heritage act, local environmental plan or development control plan.** The Land and Environment Court has held the reasoning must run the other way: in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, Preston CJ held that desired future character "establishes the building heights … **and not the other way around**." No institution in the plan-making chain is charged with checking which direction it went.

The asymmetry is the finding. A development application departing from a floor space ratio by **0.12%** must carry a written justification under clause 4.6, assessed and placed on a public register. A council setting that ratio need justify nothing — not at drafting, not at Gateway, not on exhibition, not at the Independent Planning Commission. One party must justify every departure from a number; the other need never justify the number. That asymmetry, not the conduct of any participant, is what the Commission can correct.

This is not a problem for minor adjustment. New South Wales has measured the result itself: across medium-density lots in the Six Cities Region the average maximum height control is **9.9 metres and 0.73:1**. Around 77% of residential areas are zoned low density; **94% of Greater Sydney councils prohibit multi-dwelling housing** in those zones; only **two of thirty-three** permit terraces and townhouses. Some 73.7% of Greater Sydney dwellings are one-to-two storey built form, against 10.2% in the four-to-eight storey band that carries 37.3% of New York's housing. The Reserve Bank of Australia estimates zoning raised Sydney detached house prices **73% above marginal cost**. Meanwhile 44% of households hold two or more spare bedrooms while 23% of multiple-family households cannot obtain one — one settlement producing both errors at once.

What would test it. The system already contains the mechanism; it is simply pointed in one direction. Requiring a development standard to be supported by a stated derivation and published evidence, prepared by councils and planners, on the same footing as the clause 4.6 justification demanded of every applicant, would resolve the asymmetry without removing a single power from any council. It asks only that the assumption be examined. Every comparable regulatory field already does this. Therapeutic goods, vehicle safety and building product standards each require that a new requirement be justified, that its costs and benefits be assessed, and that the assessment be published. Planning is the outlier, and it has been the outlier for seventy years.

6.3 No impact assessment applies to a planning instrument

Australia is worse than unevaluated — it is structurally exempt. State Environmental Planning Policies and Local Environmental Plans are not "statutory rules" within the meaning of section 3 of the Subordinate Legislation Act 1989 (New South Wales), so the regulatory impact statement duty in section 5 never attaches to them. They do not sunset. They are not disallowable by either House — the Interpretation Act 1987 (New South Wales) section 5(6) extends a closed list of provisions to environmental planning instruments, and the disallowance provision is not on it. Victoria did it more bluntly: planning schemes, scheme amendments and the Victoria Planning Provisions are named as exclusions in the definition of "legislative instrument" in section 3(1) of the Subordinate Legislation Act 1994 (Victoria) — written out by the Subordinate Legislation Amendment Act 2010 (Victoria), at the very moment Victoria widened the net to catch more instruments. **And there is a piece of drafting that settles whether this is accident or design.** Schedule 4 of the New South Wales Act lists excluded instruments. Item 22 — inserted after the 1989 Act was made — excludes ordinances under Part 12A of the Local Government Act 1919 (New South Wales), the old planning scheme ordinances. Those were ordinances, so they would otherwise have been caught; the exclusion was written in by name. When a class of planning instrument took a form that triggered impact assessment, it was taken out. The Environmental Planning and Assessment Regulation 2021 (New South Wales) — which prescribes forms, fees and procedural steps — received a full published regulatory impact statement with options analysis, costings and a net-benefit test, because it is a statutory rule. The State Environmental Planning Policy (Housing) 2021, which decides what may lawfully be built on residential land across the State, received none. The only review obligation is section 3.21 of the Environmental Planning and Assessment Act 1979 (New South Wales), which asks whether a plan “should be updated” every five years — a currency check, prescribing no methodology, no evidence standard, no publication requirement and no consequence. Not one published evaluation of any State Environmental Planning Policy, Local Environmental Plan or Development Control Plan against its own stated objectives could be located.

Internationally these ideas have been tested empirically and the evidence exists and it is very worthwhile reviewing here. Auckland, New Zealand's 2016 upzoning of roughly three-quarters of its residential land is the best natural experiment available. Greenaway-McGrevy and Phillips (*Journal of Urban Economics*, 2023) found **21,808 ADDITIONAL dwellings consented in five years, 4.11% increase in the available housing stock**, using a method that bounds displacement rather than assuming it away. A separate synthetic-control study reached the same conclusion by a different route: **46.5% of permits attributable to the reform, up 86.8% over seven years**, and rents six years on **26 to 33% below the synthetic control**. Two independent identification strategies agreeing is as strong as this evidence gets.

As to the reasoning behind the headlong following of these unquestioned assumptions there is a Brazilian, São Paulo regression-discontinuity study that explains the politics without ascribing a motive to anyone: **incumbent homeowner losses from upzoning, exceed consumer welfare gains roughly sixteen-fold**. That is why resistance is consistent and well organised. It requires no bad faith on anyone's part: the incentive is simply asymmetric, and those who bear the cost of change are concentrated and present while those who would gain are dispersed and absent.

This very Productivity Commission has already said this. Its 2011 benchmarking study had to commission three separate surveys because comparable data did not exist, and noted *"there is no agreed set of indicators for city liveability."* And the interim report of *this* inquiry, July 2026, carries a box headed "***The costs of heritage protection are not well evaluated against the benefits,***" finding that *"the benefit forgone (cost) from restricting development is often excluded completely,"* and recommending replacement of broad heritage protections with targeted listings subject to cost-benefit analysis. The Commission made the equivalent finding fifteen years ago. Nothing in the intervening period has required any planning authority to act on it.

Appendix F — Built-form control by ratio: the floor space ratio (section 7)

7.1 What the control is

The floor space ratio expresses permitted gross floor area as a multiple of site area. Clause 4.5(2) of the Standard Instrument — Principal Local Environmental Plan, made by the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) under section 33A of the Environmental Planning and Assessment Act 1979 (New South Wales), defines it as "the ratio of the gross floor area of all buildings within the site to the site area."[59] Optional clause 4.4 imposes it; a Floor Space Ratio Map maps it. Because it is a "development standard" under section 4, paragraph (d) of that Act, departure requires a written request under clause 4.6.[89] It applies alongside height (clause 4.3) and minimum lot size (clause 4.1) standards, the Development Control Plan's setback, site coverage, landscaped area, deep soil and building separation controls, and, for apartment development, the Apartment Design Guide.

This submission does not contend that the ratio should or should not be retained; it sets out the historical record, the responsible authorities' stated purposes, and comparable practice elsewhere.

7.2 The control entered New South Wales law in 1957, as a condition of relaxing a height limit

The Height of Buildings (Metropolitan Police District) Act 1912 (New South Wales), Act No 58 of 1912, assented 10 December 1912, provided by section 4(1) that a building could not be "erected of or increased to a greater height than one hundred and fifty feet."[90] The 150-foot standard originated in a City of Sydney Council resolution of 1908.[91]

The Height of Buildings (Amendment) Act 1957 (New South Wales), Act No 12 of 1957, assented 8 April 1957, did not repeal that ceiling but made it discretionary, subject to Ministerial approval on the recommendation of a new Height of Buildings Advisory Committee, and required conditions, by amended section 4(4), "specifying the ratio which the total floor space of the building shall bear to the area of the site … to the intent that the number of persons to be accommodated shall not exceed the number which would have been accommodated had the building been erected in all parts to a height of one hundred and fifty feet".[52]

That is a floor space ratio in substance, though the term does not appear in the Act, and it precedes the equivalent New York City control by four years (section 7.3). Its purpose, written into the section, is compensatory: the ratio was to be set so that accommodation did not exceed that of a notional building erected in all parts to 150 feet. The 1957 amendment was accordingly not a liberalisation in substance but substituted a discretionary, committee-administered ratio for a bright-line rule; the City of Sydney's planning history records that the Committee "had significant discretion and there was little consistency in their decisions," continuing "until the mid-1980s."[91]

7.3 The control was formalised in New York in 1961 and diffused internationally from there

The New York City Zoning Resolution 1916 (City of New York), adopted 25 July 1916, controlled bulk by height districts and a mandatory setback formula — the "wedding cake" envelope — with no ratio of floor area to site area.[92] Its replacement, designed in a consultants' report of August 1958, proposed Floor Area Ratio as the primary bulk control: "a simple, direct, flexible, and enforceable control over the bulk of buildings," where the existing controls had imposed a "strait jacket … on the work of the architect."[93] A Floor Area Ratio of 200 in the 1958 notation is a floor space ratio of 2:1 in current notation.[93]

The device was intended to decouple bulk control from envelope control: one of the three proposed light-and-air envelopes "permits a building … to cover 40 percent of the lot without any required setbacks … as long as the Floor Area Ratio is not exceeded."[93] The New York City Zoning Resolution 1961 (City of New York), effective December 1961, adopted it citywide with a floor area bonus for privately owned public plazas and transfer of unused floor area between adjacent lots.[94] The Skyscraper Museum records that it cut "the hypothetical total developable area of the city by more than three quarters"; the Citizens Housing & Planning Council puts the reduction in zoned housing capacity at "an estimated 80 percent."[95] Those figures are disputed and are relied on here only for direction and approximate magnitude.[96]

The United Kingdom used "plot ratio" before 1961: Hansard records it described as "the ratio between the floor space to be permitted and the area of the site" and as settled London County Council and City Corporation practice in July 1953, with the Ministry of Housing and Local Government defining it identically in February 1962.[97] Japan abolished its 31-metre absolute height limit and introduced floor-area ratio in the same amendment to the Building Standards Act 1950 (Japan) in July 1963, a system "designed with reference to regulations in foreign cities," specifically the New York amendment of 1961.[98] The plot ratio in the Buildings Ordinance 1962 (Hong Kong) took "the calculation formula, bonus mechanism, and maximum permissible number" from New York standards.[99]

7.4 Floor space ratio entered Sydney's planning practice in 1971, as a supply-restraint instrument

The County of Cumberland Planning Scheme 1951 (New South Wales), given force by the Local Government (Amendment) Act 1951 (New South Wales), Act No 18 of 1951, regulated by zone, green belt and reservation, with no floor space ratio.[51] Nor did the City of Sydney Planning Scheme Ordinance 1971 (New South Wales), Ordinance 1971 No 172, gazetted 16 July 1971, which controlled bulk by zoning and by clause 42, an absolute height control read from a map.[100]

The ratio entered Sydney practice that year through a non-statutory Council instrument, the Development Control and Floor Space Ratio Code, adopted following the City of Sydney Strategic Plan 1971. The City of Sydney records the Code as a "policy response to the considerable number of building approvals arising from the 1960s investment boom," a "laissez-faire approach" having produced "162 building schemes with FSRs of over 10:1 being approved between 1967 and 1969," which "increased the potential supply of office floor space by five times"; the Code "gave the City of Sydney a degree of control over the supply of floor space".[91] The same account records that it "did not consider building form or environmental impact issues, only the fulfilment of the bonus," and that the maximum "became the norm."[91]

The Environmental Planning and Assessment Act 1979 (New South Wales), Act No 203 of 1979, assented 21 December 1979 and commenced 1 September 1980, gave the ratio statutory foundation through the section 4 definition of "development standards".[89] Under the Environmental Planning and Assessment Model Provisions 1980 (New South Wales), "gross floor area" was defined State-wide but "floor space ratio" was not, appearing only in operative clause 15 and left to each Local Environmental Plan to define.[101] The Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales), gazetted 31 March 2006, supplied one State-wide definition.[59]

7.5 What the responsible authorities state the control is for

The only New South Wales Department of Planning document addressing the question directly is Practice Note PN 08-001, issued 30 January 2008 and not amended in the eighteen years since. It describes height and floor space ratio standards as "valuable planning tools for implementing strategic planning objectives and providing certainty … about the acceptable bulk and scale of development," used to "help establish the primary building envelopes … and the gross floor areas available."[61]

It directs, without supporting reasoning, that the two controls be applied together — "if councils wish to adopt a building height development standard then a FSR development standard should also be applied, and vice versa"[61] — and allocates height and floor space ratio to the Local Environmental Plan, and setbacks, storey controls and three-dimensional building envelopes to the Development Control Plan, which "should not exceed the maximum height and FSR controls that are set in the LEP."[61] The controls describing the physical envelope therefore sit in an instrument with no clause 4.6 variation pathway, while the abstracted ratio is an appealable development standard.

There is no State-level statement of what the ratio is for. Clause 4.4(1)(a) of the Standard Instrument reads, in full, "[set out objectives of the clause]".[59] Practice Note PN 11-001 confirms that "[l]ocal objectives for floor space ratios are to be inserted into the clause."[102] Every clause 4.6 request is therefore tested against locally drafted objectives that vary in kind: clause 4.4(1) of the Sydney Local Environmental Plan 2012 (New South Wales) sets four, one on built form and the rest on floor space supply, traffic generation, infrastructure capacity and locality character; clause 4.4(1)(a) of the Inner West Local Environmental Plan 2022 (New South Wales) sets one, "to establish a maximum floor space ratio to enable appropriate development density"; clause 4.4 of the Hornsby Local Environmental Plan 2013 (New South Wales) sets one, "bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality."[103]

In Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61 Preston CJ held that the Commissioner below had erred in treating regulation of density as an end in itself: it "is not the end to be achieved by the clause, rather it is a means to achieve the goals identified in objective (a) … objective (c) … and objective (d) …"[104]

7.6 The Department's design guidance describes the ratio as a derived figure, not as the operative control

The Apartment Design Guide, made under State Environmental Planning Policy No 65, sets out the Department's own methodology. Part 2 states that primary development controls "include building height, floor space ratio, building depth, building separation and setbacks" and together "create a building envelope"; that "FSR is not a measure of the maximum capacity of the building envelope"; that gross floor area "should only 'fill' approximately 70% of the building envelope"; that "building envelopes should be tested prior to setting FSR controls"; and that an envelope "should be 25-30% greater than the achievable floor area."[105]

On that methodology the envelope is the primary object of design and the ratio a figure derived from it by testing, consuming approximately 70% of the envelope. The architecture described at 7.5 gives binding, appealable force to the derived figure and leaves the envelope in a non-statutory document.

At 240–242 Pennant Hills Road, Thornleigh, a proposal of maximum height 5.46 metres against a permitted 10.5 metres — 48% of the permitted height — required a clause 4.6 request and determination by the Hornsby Shire Local Planning Panel because its gross floor area produced a floor space ratio of 0.62:1 against a 0.5:1 maximum; Council's assessment recorded that "an increase in FSR would not generate additional infrastructure demand and does not amount to an overdevelopment of the site."[106] In the City of Newcastle's variations register for the first quarter of 2025, an application at 54 Greaves Street, Mayfield East required a full written clause 4.6 request for a variation of 0.12%.[63]

The position is not uniform. In some Local Environmental Plans a ratio applies to land carrying no mapped height control: in Dao v Inner West Council [2025] NSWLEC 1741 the Commissioner recorded "there is no mapped maximum building height for the site in the LEP," while landscaped area, site coverage and floor space ratio standards applied.[107]

New South Wales does not publish data allowing the question to be tested at scale. The statewide register of variation requests lodged from 1 November 2023 is an embedded dashboard with no export facility, no application programming interface and no statistics disaggregating variations by the standard varied; the Local Development Performance Monitoring series reports variation counts without identifying the standard.[108]

7.7 Comparative practice

Four propositions about international practice commonly advanced in Australian debate are not, on the evidence, uniformly correct.

Jurisdictions regulating mid-rise residential form without a floor space ratio. France abolished the coefficient d'occupation des sols, a plot ratio in substance, by the Loi n° 2014-366 du 24 mars 2014 (France); maximum floor area may now be fixed only by "la combinaison des règles de densité fixées par le règlement du PLU".[109] The Plan Local d'Urbanisme bioclimatique for Paris, approved 20 November 2024, regulates by height ceiling, building-band depth and emprise au sol, with no floor space ratio.[110] Paris recorded 20,054 persons per square kilometre at the 2022 census — about 200 per hectare — and the 11th arrondissement 38,143, about 381 per hectare.[111] The Atelier Parisien d'Urbanisme measured the built plot ratio of four Parisian quartiers in 2003 at between 1.93 and 3.22 gross.[112]

Vienna has never used a floor space ratio. Section 76 of the Bauordnung für Wien expresses buildable extent as plot coverage — in general residential and mixed areas, not more than one third — and section 75 fixes height by building class tied to the width of the street faced, from street width plus two metres to twice the street width.[113]

Jurisdictions that do use a ratio. Section 17 of the Baunutzungsverordnung (Germany) sets a Geschossflächenzahl of 1.2 for general residential areas and 3.0 for urban and core areas. The Baulandmobilisierungsgesetz 2021 (Germany) downgraded those from binding upper limits to orientation values, binding as ceilings only in weekend-house and holiday-house areas, and they apply only where a binding development plan exists; in unplanned inner urban areas section 34 of the Baugesetzbuch (Germany) applies a contextual fit test with no ratio.[114] Berlin's six to seven storey perimeter-block fabric is produced by the Traufhöhe, a 22-metre eaves height applying to approximately 3,400 hectares, about 10% of the city's residential block area.[115]

Barcelona uses both. The Pla General Metropolità d'Ordenació Urbana 1976 sets, for the dense urban-block zone, a statutory table of maximum regulating height against street width — 8.55 metres and ground floor plus one storey on streets under 8 metres, to 23.80 metres and ground floor plus six storeys on streets of 30 metres or more — with a buildability index in square metres of floor per square metre of site.[116]

Japan's system is ratio-based and national. Article 52(1) of the Building Standards Act 1950 (Japan) fixes a closed menu of floor area ratio values per use zone from which the city plan may only select, supplemented by a road-width constraint under article 52(2) and by slant-plane and winter-solstice shadow rules. Article 6 requires the building official to certify conformity within thirty-five days, with no merit assessment, no notification and objection stage and no discretion to refuse a conforming plan; article 59-2 and the Act on Special Measures Concerning Urban Renaissance 2002 (Japan) allow opt-in exceedance only.[117] Tokyo Metropolis dwelling starts were 144,562 in 2013 and 128,330 in 2023, against a 2023 population of 14,099,993 — approximately 9.1 starts per thousand residents.[118] Comparison requires care: Tokyo measures starts, New York City completions, London net additional dwellings and the Australian Bureau of Statistics completions; the 45,552 dwellings completed in New South Wales in the twelve months to December 2024 are State-wide, not metropolitan.[119] Flat Japanese housing costs are supportable for approximately 1995 to 2018 on the Japanese consumer price index housing series and the Bank for International Settlements real residential property price index, but not for new Tokyo apartments in the 2020s: the 23-ward average reached ¥116.32 million in fiscal 2024, an eleven% annual increase and a fourth consecutive record.[120]

In the People's Republic of China the plot ratio (容积率) is the central allocative instrument, fixed parcel by parcel in the detailed control plan under the Urban and Rural Planning Law 2007 (People's Republic of China) and carried into the land and project permits; article 30 of the Shanghai municipal planning regulations makes the planning conditions “an integral part of the grant contract”.[121] The Shanghai technical regulation sets maximum plot ratios of 1.8 for multi-storey and 2.5 for high-rise residential development inside the Puxi Inner Ring Road, density being set having regard to land value among other matters.[122] The mid-rise slab typology is produced not by the ratio but by article 27, requiring an obstructed dwelling to receive not less than one continuous hour of full-window effective sunlight on the winter solstice, operationalised as a fixed building-spacing-to-height coefficient.[122]

New York City. The 12.0 floor area ratio cap on residential development in section 26 of the Multiple Dwelling Law (New York) has not been repealed. The 2024 New York State budget inserted exceptions for cities of over one million population where local approval includes public review procedures and the land is designated under a mandatory affordable housing programme, and for State Urban Development Corporation projects with at least 25% of rental units affordable at a weighted average of 80% of area median income, subject to a historic-district exclusion, a certificate of no harassment requirement and tenant relocation obligations.[123] The “City of Yes for Housing Opportunity” amendment adopted by the New York City Council on 5 December 2024 created R11 and R12 districts with floor area ratios of 12.00 and 15.00, rising to 18.00 for qualifying affordable or senior housing.[124]

The evidence does not support a proposition that high-density mid-rise cities regulate without density controls, but a narrower one: jurisdictions differ in which control is primary. Paris and Vienna place the envelope — height, depth, street relationship, coverage — first, with no floor area ratio; Germany’s ratio is advisory in most contexts and inoperative absent a binding plan; Barcelona pairs a ratio with a statutory height-to-street-width table; Japan, China and New York City place the ratio first, Japan alongside a non-discretionary pathway on a thirty-five day statutory clock and China with the ratio priced into the land contract.

7.8 Current New South Wales settings

The State Environmental Planning Policy (Housing) 2021 (New South Wales) applies floor space ratio standards at State level. Chapter 6 (Low and Mid Rise Housing), sections 162 to 180, commenced in two stages on 1 July 2024 and 28 February 2025. Its non-refusal standards pair a ratio with a height in every case: dual occupancy 0.65:1 at 9.5 metres (section 168); multi dwelling housing 0.7:1 at 9.5 metres (section 172); residential flat buildings and shop top housing in Zone R1 or R2, 0.8:1 at 9.5 metres (section 179); residential flat buildings in Zone R3 or R4 within 400 metres of a nominated centre, 2.2:1 at 22 metres, and between 400 and 800 metres, 1.5:1 at 17.5 metres (section 180).[125] Chapter 5 (Transport Oriented Development), commenced 13 May 2024, applies 2.5:1 at 22 metres within 400 metres of an applicable station.[126]

Two features are noted. The two State policies apply the same 22-metre height envelope with floor space ratios differing by twelve% (2.5:1 and 2.2:1). And between the Explanation of Intended Effect of December 2023 and the final instrument the inner-area ratio fell from 3:1 to 2.2:1 and the outer-area ratio from 2:1 to 1.5:1, while heights rose from 21 metres to 22 metres and from 16 metres to 17.5 metres, described by the Department as “adjusting the proposed maximum building height and floor space controls while keeping the Apartment Design Guide unchanged.”[65] The proposal for “reducing the minimum building separation requirements for 5 and 6 storey buildings” did not proceed.

Departmental guidance on the NSW Housing Pattern Book mid-rise patterns states that the Apartment Design Guide “is not required to be considered when assessing mid-rise housing pattern development applications.”[127]

The National Construction Code (Australia) is also relevant to the mid-rise band. Under Table C1.1 of Volume One a Class 2 residential building reaches Type A construction — the most fire-resistant and costly type — at a rise in storeys of three, whereas Class 5 to 8 buildings do not until four storeys; sprinklers are required in Class 2 buildings at a rise in storeys of four; a second exit is not required until effective height exceeds 25 metres. A 22-metre building of six storeys therefore sits immediately below the 25-metre threshold triggering second exits, stair pressurisation and associated systems.[128] The Department’s Mid-Rise Patterns Technical Guide (November 2025) states that the mechanical engineering approach is to “avoid smoke-control systems due to building height constraints (<25m),” and relies on a performance solution permitting “a non-fire-isolated stair connecting up to 5 storeys.”[129]

7.9 What the record establishes, and what it does not

The following statements are supported by the sources cited.

1. The floor space ratio entered New South Wales law in 1957 as a condition on relaxing a height limit, to ensure the relaxation produced no additional accommodation capacity.

2. It entered Sydney’s local planning practice in 1971 through a non-statutory Council code, adopted on the City of Sydney’s own account to control an oversupply of approved floor space.

3. The formal device was designed in New York in 1958 and adopted there in 1961 to separate bulk control from envelope control, diffusing to the United Kingdom, Japan, Hong Kong and elsewhere.

4. The Department’s only published rationale dates from January 2008 and has not been revised; its direction that height and floor space ratio be applied together is stated without supporting reasoning.

5. There is no State-level statement of objectives: clause 4.4(1)(a) of the Standard Instrument is a blank completed by each council, and the objectives adopted differ in kind between councils.

6. Departmental design guidance makes the envelope the primary control, has the ratio derived by testing it, states that the ratio “is not a measure of the maximum capacity of the building envelope,” and sets it at approximately 70% of that envelope; the statutory architecture binds the derived figure and leaves the envelope non-statutory.

7. Documented cases exist in which the ratio bound while height, setback and site coverage controls did not, and the consent authority recorded no infrastructure, character or amenity consequence.

8. In some Local Environmental Plans the ratio applies to land carrying no mapped height control, so the relationship between the two controls is not uniform across New South Wales.

9. Comparable high-density cities differ in which control comes first: Paris and Vienna regulate mid-rise residential form by envelope with no floor area ratio; Germany’s ratio is advisory in most contexts; Barcelona, Japan, China and New York City use ratios, Japan alongside a non-discretionary approval pathway with a thirty-five day determination period.

The following are not established by the material available, and are not asserted.

10. No judgment of the Land and Environment Court of New South Wales holds that height, setback or site coverage controls render the floor space ratio unnecessary.

11. No published review by an Australian government body identifies the ratio as duplicative of envelope controls; the proposition is untested in the Australian official literature.

12. No published quantified analysis was located identifying whether floor space ratio, height or the Apartment Design Guide is the binding constraint on mid-rise residential feasibility in New South Wales.

13. New South Wales does not publish variation data in a form allowing propositions 10, 11 or 12 to be tested: the State mandates a development standard, requires every departure to be justified in writing and recorded on a public register, and does not publish the resulting data in analysable form.

Appendix G — How residential density standards are set in New South Wales (section 8)

8.1 The question

Every residential development standard in New South Wales is a number: a maximum height in metres, a maximum floor space ratio, a minimum lot size, each described in the governing instruments as appropriate to its locality. This section sets out where those numbers come from, what evidentiary standard applies to them, at what point they are independently examined, and how the built form they perpetuate compares with the composition of Australian households. It makes no claim about the intentions of any council, officer or community.

8.2 The State instrument contains no number

The Standard Instrument — Principal Local Environmental Plan, made by the Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales), expresses both principal built-form controls as map references: clause 4.3 provides that height is "not to exceed" the maximum shown on the Height of Buildings Map, and clause 4.4 that floor space ratio is not to exceed that shown on the Floor Space Ratio Map.[59] The objectives of clause 4.4 are a blank — "(a) [set out objectives of the clause]"[59] — and the objectives of Zone R2 Low Density Residential are qualitative: to provide for "the housing needs of the community within a low density residential environment" and to enable land uses serving residents' "day to day needs".[59] The term "low density" is not defined numerically anywhere in the instrument. Residential flat buildings are excluded from Zone R2 by omission from the permitted-with-consent list, made prohibitive by the standard formula "any development not specified in item 2 or 3".[130] Local Environmental Plan Practice Note PN 11-002 describes Zone R2 as land where "primarily low density housing is to be established or maintained", which "typically features detached dwelling houses": the descriptive and the prescriptive in a single sentence.[131] The instrument creates a mandatory slot and supplies no value and no method for filling it; every residential density number in New South Wales is a value entered on a council map.

8.3 What the documented derivations show

Councils are not generally required to publish how a number was arrived at, and most do not. Northern Beaches Council planning proposal PP-2024-1343 includes an appendix analysing floor space ratio data for 2,177 properties drawn from development applications lodged over the period 2011-2022, and sets the recommended controls at the 70th percentile — the value at or below which 70% of the more than 2,000 properties sampled fell: 0.55:1 for lots under 500 square metres, 0.5:1 for 500–699 square metres and 0.45:1 for 700–899 square metres.[53] The input to the calculation is the record of what has already been approved and the output is a legal ceiling, converging on 0.5:1, the floor space ratio most commonly applied to low density residential land across New South Wales.

The maximum height of 8.5 metres for a dwelling house appears at clause 3.13(1) of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (New South Wales) as made, and is close to ubiquitous in Zone R2.[54] The New South Wales Parliamentary Library Research Service records the standard without stating a derivation; the only validation it records is a third-party observation that the Code had “undergone extensive testing on pre-existing housing stock”.[55] In Tweed Shire, a 1982 Ministerial Commission of Inquiry recommended a 9.0 metre urban building height expressly as the default to apply “when specific local analysis was absent”; that figure was written into the Tweed Local Environmental Plan 1987.[132]

8.4 What the plan-making guidance requires

The Local Environmental Plan Making Guideline is the operative departmental instruction for making and amending Local Environmental Plans, and its two merit tests are the entire evidentiary standard in the New South Wales system. Strategic merit asks whether a proposal aligns with the State strategic planning framework, is consistent with a relevant local strategic planning statement or regional plan action, or responds to a change in circumstances not recognised by the existing framework; its achievement “is not a yes or no response”, and the proposal “should include reasonable justification explaining how and why strategic merit is achieved.”[60] Site-specific merit asks whether the proposal has regard to “existing uses, approved uses, and likely future uses of land in the vicinity”, and to “services and infrastructure that are or will be available to meet the demands arising from the proposal.”[60]

Strategic merit is a consistency test rather than a derivation test: regional plans and local strategic planning statements set dwelling targets and directions, not heights or floor space ratios, and consistency with a document silent on the number is satisfied by non-contradiction. Site-specific merit directs the assessor to what is already around the site, and infrastructure enters only as a servicing check on a number already chosen. The Guideline’s standard studies — an urban design study that “may be required”, covering future character and “built form outcomes including numeric and assumptions made”, and a reference scheme testing built form feasibility and development capacity through representative massing — test the number rather than derive it.[60]

Local Environmental Plan Practice Note PN 08-001 — Height and floor space ratio, issued 30 January 2008 and never revised, explains how floor space ratio is calculated and applied but supplies no methodology for deriving the value.[61] Practice Note PN 11-001 directs that heights be shown on a Height of Buildings Map and local objectives for floor space ratios inserted into the clause, without addressing derivation.[102]

8.5 What the instruments that describe locality character actually say

Development Control Plans are conventionally structured as a statement of existing character followed by a statement of desired future character. In Botany Bay Development Control Plan 2013, Part 8, the existing local character of the Pagewood precinct at 8.3.1 is "one and two storey detached dwelling houses of varying architectural styles and periods"; the desired future character at 8.3.2, on the following page, is to "Retain the remaining residential land in the Precinct for low density residential development of one and two storey detached dwelling houses."[56] The same words serve first as description and then as prescription; the companion chapter's control is that development "must be designed to reinforce and maintain the existing character of the streetscape."[56]

Inner West Development Control Plan, Part 4, follows the same structure in every neighbourhood chapter: for Croydon Park, objective O1 is "To maintain distinctly single storey residential streetscapes…"; for Enmore, the desired future character is "the preservation of its predominantly low-density and single-storey residential streetscapes"; for Haberfield, "maintaining a low-density, predominantly single-storey character".[133] Part 3, clause C8, states the setback method arithmetically: front and rear setbacks are to be "Calculated by averaging the front and rear setbacks of the adjoining main buildings on either side of the subject site."[57] The permitted envelope is the mean of the two adjacent sites and cannot generate a value not already present on them.

North Sydney Development Control Plan 2013, Part C, records its own evidentiary basis: the statements "have been derived from the Area Character Study that was originally undertaken by Council in 1998", and the underlying residential development strategy includes to "[d]iscourage intensification and inappropriate redevelopment in sensitive areas… by maintaining existing lower density zones."[58] The statements governing built form there in 2026 rest on conditions observed twenty-eight years earlier, with no re-derivation described.

8.6 What the Land and Environment Court has held

The Land and Environment Court of New South Wales has held that the character judgment must be prior to the numeric standard. In Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115, Preston CJ held at [92] that the desired future character "establishes the building heights… and not the other way around", at [93] the same of "the FSR of buildings in these zones", and at [95] that it "exists before and informs the establishment of the maximum height and FSR for buildings". At [98]–[99] the Chief Judge identified the circularity that the contrary construction would produce — a development contravening the standards could never demonstrate consistency with a character "defined and fixed by those development standards" — and construed the term to avoid it, "as permitting regard to be had to matters other than only the development standard."[62]

On compatibility at the development application stage, the planning principle in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 states at [22] that "compatibility is thus different from sameness" and that buildings "can exist together in harmony without having the same density, scale or appearance"; at [23] that compatibility with the existing "is not always desirable" where the controls envisage a change of character; and at [26] that in "the majority of cases" character "needs to be defined as part of a proposal's assessment."[134]

Two matters should be recorded accurately. First, in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, an argument that a commissioner's reasoning was circular was put by the applicant at [50] and was rejected by Preston CJ at [126], who described it as "a rhetorical one" and concluded "These reasons are factual."[135] The authority for the proposition that character must precede the number is SJD DB2, not Initial Action. Second, no judgment located holds a density or height control invalid or suspect for want of an evidentiary foundation; challenges proceed on power, process and Ministerial satisfaction, and the number reaches the Court as a given.

8.7 Where the number is independently examined

The plan-making chain runs from a proponent or council strategic planners, to a council resolution, to a Gateway determination made under section 3.34 of the Environmental Planning and Assessment Act 1979 (New South Wales) by the Minister — an authority the Guideline notes is "generally delegated to the Planning Secretary and Departmental staff" — with an optional rezoning review by a regional or Sydney planning panel, then public exhibition, then the plan made under section 3.36.[60] At each stage the test is strategic merit or site-specific merit as set out at 8.4, and neither requires that a height or floor space ratio figure be justified by evidence, modelling or analysis.

The most independent scrutiny available is a rezoning review by the Independent Planning Commission. In its Advice Report on 34 to 46 Brookhollow Avenue, Norwest (PP-2023-2049), a proposal to increase height of building and floor space ratio to permit residential flat buildings, the Commission agreed with the Department and Council on built form, noting heights reduced by the proponent's revisions, "detailed consultation and negotiation between the Proponent and Council", and "an appropriately sensitive interface to neighbouring residential development".[64] The provenance of the number is not examined.

8.8 The term against which the number is tested is not defined

A systematic review of New South Wales council planning documents published in the journal Heritage in 2023 found that "'Character' is not defined as a term in the various heritage acts, local development plans or in the development control plans, although the latter documents make liberal use of it", and that no official publication of the New South Wales state heritage authorities defines the purpose of heritage conservation areas beyond "a spatially bounded area containing heritage items", so that "everybody is supposed to know what a heritage conservation area is". It also found that 59.1% of council definitions of a contributory item turn on whether it "contributes to the character of the area", and that definitions of "contributory" range from 16 to 193 words with no standardised criteria.[136]

The geographic scale at which character is measured is itself contested and outcome-determinative. In Bondi Residence Pty Ltd v Waverley Council [2024] NSWLEC 1297 the applicant relied on SJD DB2 to read character across the whole of Campbell Parade, while the Council submitted at [37] that the consideration "should not be as broad", because "each area within the Bondi Beachfront Area has its own character statement".[137] The dispute was about the size of the area assessed, not the evidence of character.

8.9 The State's own measurement of the resulting controls, and its response

The New South Wales Government has measured the aggregate effect of the locally-set controls. Its Explanation of Intended Effect of December 2023 records that across all medium density lots in the Six Cities Region the average maximum height control is around 9.9 metres and the average maximum floor space ratio 0.73:1, enabling only a 3-storey building with few apartments, and that even in High Density Residential zones the averages are 15.8 metres and 1.25:1, enabling only a 4- to 5-storey building — developments "not usually economically feasible to deliver in well located areas." It records that around 77% of residential areas are zoned low density against around 12% medium and 2% high density; that residential flat buildings and shop-top housing are prohibited in around 60% of medium density areas; that multi-dwelling housing is prohibited in the Low Density Residential zone in 82% of lots across the Six Cities; and that 94% of Greater Sydney councils prohibit multi-dwelling housing in their low-density zones.[65] It subsequently stated that "only two of 33 councils in Greater Sydney allow terraces and townhouses in low-density (R2) zones".[66]

Two features of the State's response are on the record. The remedy adopted was not a requirement that councils justify their numbers but a set of non-refusal standards prevailing over the local controls. The same Explanation provides the only documented instance located of a New South Wales density number derived from an input other than existing built form: the standards were set by distance from a station or centre and "calibrated to enable a typical 3- to 6-storey apartment building that can achieve an appropriate level of amenity".[65] Those figures were subsequently reduced from 3:1 to 2.2:1 in the inner catchment and from 2:1 to 1.5:1 in the outer catchment before the instrument was made.

Prohibition is also still being extended by councils. North Sydney Council resolved on 10 January 2022 to prohibit residential flat buildings in Zone R3 Medium Density Residential, reversing permissibility granted in 2021; a Gateway determination issued 12 August 2022; exhibition ran from 26 September to 7 November 2022; and Council endorsed the prohibition on 13 March 2023. Of 152 submissions, 121 supported it. The stated rationale included the zone objective that buildings be "mainly 1 or 2 storeys".[138]

8.10 The household composition against which the built form is set

The controls perpetuate a stock dominated by the detached house. The household data below cuts in more than one direction and is presented in full.

At the 2021 Census separate houses were 72.3% of occupied private dwellings nationally; of those with bedrooms stated, 90.4% had three or more and 46.6% four or more, and in Greater Sydney 55.1% had four or more.[139] Households of one or two people were 59.1% of all households, and lone-person and couple-without-children households together 52.4%.[140] Of Australia's separate houses, 3,529,166 — 52.6% — housed one or two people in 2021, essentially unchanged since 2011.[141] Two-person family households in separate houses of four or more bedrooms rose from 569,975 in 2011 to 816,364 in 2021, up 43.2% against 1.7% for three-bedroom separate houses, and by 44.4% in Greater Sydney and 56.0% in Greater Melbourne.[141]

The Housing Occupancy and Costs, 2019–20 survey, on the Canadian National Occupancy Standard, records that 44.3% of Australian households — approximately 4.31 million — had two or more spare bedrooms, rising to 75.4% of couple-only households and 54.1% of households in separate houses; only 3.8% needed an additional bedroom.[70] Against that, multiple-family households — 225,500 households, 2.3% of the total — are the only household type in which crowding is dominant: 23.1% needed one or more additional bedrooms, six times the national rate and more than double the next-highest type.[70] Australian Housing and Urban Research Institute research found 89.4% of multi-generation households in a separate house against 78.5% of all households, that they are pushed toward larger dwellings in outer suburbs in a way that "contradicts urban consolidation policies", and that because granny flats are classified as separate dwellings, secondary-dwelling arrangements are not captured in official statistics at all.[142]

The Australian Bureau of Statistics records that while households are becoming smaller, dwelling size is increasing: average persons per household fell from 3.1 in 1976 to 2.6 in 2009–10, while dwellings with four or more bedrooms rose from 17% to 31% and average bedrooms per dwelling from 2.8 to 3.1.[143] Over the same period detached houses fell from 78% of the Australian dwelling stock in 1976 to 72.3% in 2021, under six percentage points in forty-five years.[144]

At the 2021 Census, 27.6% of Australians were born overseas and 48.2% had at least one parent born overseas; in Greater Sydney, 52.4% of residents had both parents born overseas and 42.0% used a language other than English at home.[145] In the year to December 2025, net overseas migration to New South Wales was 90,961 while net interstate migration was −21,465.[146]

Australian stated-preference research has consistently recorded a strong preference for detached housing, and this should be recorded plainly. Surveys compiled by the Grattan Institute record 67% to 95% preferring detached housing across studies from 1973 to 2004.[147] The Australian Housing Aspirations Survey 2018 (n = 7,343) found satisfaction with living in a house at 67 to 86% across age cohorts against 37 to 47% for apartments, about half of apartment residents seeing a move to a house as meeting their longer-term aspirations.[148] Research for the National Housing Supply Council found approximately 80% of migrant homeowners occupy separate houses against approximately 30% of migrant renters, indicating that the driver is tenure rather than cultural preference.[149]

The distinction the evidence supports is between what households prefer in the abstract and what they would choose at prevailing prices under their own budget constraints. The Grattan Institute's The Housing We'd Choose (June 2011) put real dwelling and location combinations at market prices to 572 households. In Sydney detached houses were 62% of the stock against 41% chosen — an oversupply of 21 percentage points — semi-detached dwellings 12% against 25%, and apartments of four or more storeys 10% against 20%; in Melbourne the gaps were −24, +15 and +11 percentage points.[150] The companion methods paper ranked number of bedrooms first among 56 housing variables, "whether the house is detached" fifth and a large garden twentieth.[151] A 30% fall in the relative price of detached housing was modelled to raise the proportion of Sydney households choosing one by about 15 percentage points: the preference is real and is rationed by price.

Two qualifications should be stated. The Australian Bureau of Statistics and the Australian Housing and Urban Research Institute both caution that spare bedrooms are not necessarily unused — households "may put these 'spare' rooms to various uses (e.g. study, office, gymnasium, craft or hobby room, children's play room, guest bedroom or store room)"[152] — so the under-utilisation figures describe the composition of the stock, not behaviour. Second, Institute research published in 2020 documents substantial dissatisfaction with apartment living in Australian cities, most acute among lower-income residents, with 23% of Sydney's lower-income apartment households needing additional bedrooms and 41% of lower-income high-density households in Sydney including children.[153] That evidence supports not density in the abstract but well-designed, family-capable housing in the mid-rise range.

8.11 What the record establishes, and what it does not

The following statements are supported by the sources cited.

1. The Standard Instrument contains no residential density number and no method for setting one: clause 4.4(1)(a) is a blank for each council to complete, and "low density" is nowhere defined numerically.

2. Where a low-density floor space ratio derivation has been published, the method was to measure 2,177 existing approvals over eleven years and adopt the seventieth percentile. The only recorded validation of the 8.5 metre height standard is testing against pre-existing housing stock.

3. Neither merit test in the Local Environmental Plan Making Guideline requires a height or floor space ratio figure to be justified by evidence; site-specific merit directs the assessor to existing and approved uses in the vicinity, and infrastructure enters as a servicing check on a number already selected.

4. Development Control Plans are structured as existing character followed by desired future character, and in the examples cited the second restates the first. One setback control is the mean of the two adjoining sites; one set of character statements in force in 2026 derives from a 1998 study.

5. The Land and Environment Court has held that desired future character must establish height and floor space ratio "and not the other way around", construing the term to avoid the circularity the contrary reading produces.

6. No judgment located holds a density control invalid or suspect for want of an evidentiary foundation, and no stage of the plan-making chain examines the provenance of the number. In the most independent review available, the Independent Planning Commission's reasoning on built form was deference, process and interface with neighbours.

7. The term against which the number is tested is not defined in any New South Wales heritage act, local environmental plan or development control plan, and the State heritage authorities have published no definition of the purpose of heritage conservation areas.

8. The State has measured the resulting controls at an average of 9.9 metres and 0.73:1 across medium-density lots in the Six Cities Region and 15.8 metres and 1.25:1 in high-density zones, and responded by overriding the local numbers with non-refusal standards rather than requiring that they be justified.

9. More than half of Australia's separate houses are occupied by one or two people and 44.3% of households have two or more spare bedrooms, while 23.1% of multiple-family households need an additional bedroom — the highest rate of any household type by a factor of six.

10. Where households have chosen among real dwellings at real prices, the resulting mix differs from the stock by 21 percentage points in Sydney and 24 in Melbourne for detached housing, the shortfall concentrated in semi-detached dwellings and apartments of four or more storeys.

The following are not established by the material available, and are not asserted.

11. Nothing in this section supports any conclusion about the motives of councils, councillors, officers or communities. The material is confined to what the instruments provide, what the guidance requires and what the decisions record.

12. No evidence located establishes that Australian households prefer attached or apartment housing to detached housing in the abstract; the stated-preference literature is consistent in the opposite direction, and migrant households converge on detached housing as they acquire ownership. The narrower claim the evidence supports is that the mix households would choose at prevailing prices differs materially from the mix the stock provides and the controls permit.

13. No published New South Wales analysis was located isolating the contribution of character or heritage controls to housing costs. The Reserve Bank of Australia's estimate that zoning raised detached house prices 73% above marginal cost in Sydney as at 2016 measures zoning restrictiveness in aggregate and should not be attributed to any single control.[69]

14. No published figure was located for the prevalence of multigenerational living from the 2021 Census; the best available are from 2006, when 19.4% of the Australian population and 23.6% of Sydney households lived in a multi-generation household.[142] Because granny flats are classified as separate dwellings, secondary-dwelling arrangements are not captured in official statistics.

Appendix H — The heritage issue in planning control (section 9)

Cross-reference. *This section and response 2.3 in Part Two address the same subject from different directions: this section sets out why the designation decision is untested; response 2.3 answers the Commission's specific questions on land-use controls and on reform direction 2.5. Where a source or a figure appears in both, it is cited once in the references.*

Again a completely untested assumption lies at the basis of the heritage 'protection' of vast swathes of our inner city areas to the confoundment of the need to increase the density and habitability of our cities. The Spennemann 2023 finding that the state authorities have never defined the purpose of a heritage conservation area is telling.

The 'heritage contributory value' assigned to a building or area, is supposedly determined by the recommended method set out in the *Guidelines for the Preparation of Statements of Heritage Impact 2023* as published by the NSW Department of Planning and Environment, which is used to ensure the following core heritage issues are considered in detail:

*Is the building associated with **our** history or with **persons of significance***
Is the building of a rare style, form or typology
Has the building been constructed with unusual technical skill, is it well built
Is the building an exemplar of its type
Is the building part of a listed grouping of heritage buildings
Is the building in a noted heritage area.
The notions of *our* history and *persons of significance* are not defined in the Guidelines, in the Heritage Act 1977 (New South Wales), or in any published guidance of the New South Wales heritage authorities.

The seven significance criteria were developed in 1999 and gazetted under section 4A(3) of that Act rather than enacted in it, and they carry no quantitative standard.

The judgement is also unqualified. There is no legislated qualification for a heritage consultant anywhere in Australia. The Heritage Act 1977 (New South Wales) is silent; the Design and Building Practitioners Act 2020 (New South Wales) contains no heritage practitioner class; the departmental guidance states that author qualifications are “recommended” only. Full membership of Australia ICOMOS requires three years' experience, a statement and an annual fee. The Burra Charter is a private charter with force only where a council has adopted it by policy. The contrast with the Architects Act 2003 (New South Wales), which regulates entry to a profession that may not use its own title without registration, is stark. A determination that can prevent the redevelopment of a dwelling is made by a person for whom no competency standard exists.

The asymmetry shows in the record of approvals as well as refusals. Section 3.9.1(6) of the Sydney Development Control Plan 2012 requires, where substantial demolition of a contributory building is proposed, that the heritage impact statement demonstrate that the building is not capable of retention or re-use, and include a quantity surveyor’s cost comparison where demolition is advanced on economic grounds, a structural engineer’s condition report where it is advanced on condition, and a pest inspection for a weatherboard building. In a consent granted under delegation by an inner-Sydney council in 2025 for demolition behind a retained facade, the heritage impact statement contained none of those four documents; its recorded response to the clause was a single sentence referring the reader to “the sections below”, marked “Complies”, and the assessment report recorded the clause as satisfied. No criticism of the applicant or the officer is intended and none is warranted; the point is systemic. A control that demands four classes of expert evidence was recorded as met with none present, no reasons were required for the favourable finding, and nothing in the system was positioned to notice. Which answer is right on the merits is not the question here; that a mandatory evidentiary control can be recorded as satisfied without the evidence, and that the favourable finding needs no reasons, is.

Nor is the decision to designate tested. No cost-benefit analysis or regulatory impact assessment is required at any point before a heritage conservation area is created. The pathway runs through a planning proposal and a Gateway determination in the “basic” category, and neither merit test requires the costs of designation to be identified, let alone quantified. The Commonwealth's own regulation office reached the same conclusion two decades ago: “Typically cost considerations are irrelevant for the decision to list”, and “heritage costs seem to be largely unknown and unassessed”.

This Commission has said so before. Its 2006 inquiry into the conservation of Australia's historic heritage places found the regime “often ineffective, inefficient and unfair”, recorded that identification for statutory listing focuses on expected benefits with “little if any, consideration of the costs imposed either, on the owner or the community more generally”, and recommended a hardship pathway and negotiated conservation agreements. The core recommendations were not adopted. Twenty years on, the interim report of the present inquiry reaches the same finding in the same words.

The scale is not marginal. Approximately 25% of residential land within ten kilometres of the Sydney central business district is heritage-protected, of which about 20 percentage points is heritage conservation area rather than individual listing. In North Sydney, Newtown, Edgecliff and Redfern the figure runs between 50 and 85%. The City of Sydney alone administers 75 conservation areas covering more than 22,000 buildings, and more than 40,000 local heritage items are listed in New South Wales local environmental plans.

The State has already drawn the distinction, and has not explained it. The low and mid rise housing provisions of the State Environmental Planning Policy (Housing) 2021 (New South Wales) do not apply to every parcel in New South Wales. Section 164(1) lists what is carved out: bush fire prone land; coastal vulnerability areas and coastal wetlands and littoral rainforests areas within the State Environmental Planning Policy (Resilience and Hazards) 2021 (New South Wales), Chapter 2; land to which the transport oriented development chapter applies; the local government areas of Bathurst Regional, City of Blue Mountains, City of Hawkesbury and Wollondilly; specified probable-maximum-flood land and flood planning areas; land in high aircraft noise contours; land near a relevant pipeline; and, at paragraph (d), "land that is a heritage item or on which a heritage item is located". Heritage conservation areas are not on that list.

Two chapters later the same policy carves them out. Section 182(1), which sets the land to which the pattern book chapter applies, repeats the same categories — bush fire prone land, coastal hazard land, the same four local government areas, the same flood exclusions — and then adds, at paragraph (d), "land that is identified in an environmental planning instrument as being in a heritage conservation area". The two terms are separately defined in the policy's dictionary, so the heritage item exclusion in section 164 cannot be read as picking up conservation areas. The same instrument, drafted on the same template, excludes conservation areas from one chapter and not from the other. Neither the policy, nor its explanation of intended effect, nor any published departmental material located records a reason for the difference. Whichever treatment is correct, one of them was chosen without a stated derivation — which is the proposition this submission advances.

The exclusions are also narrower than they are commonly described. Bush fire prone land is excluded outright. Flood exposure is not. Section 164(1) excludes only land identified as probable maximum flood in Figure 1-1 of the Hawkesbury-Nepean River Flood Study—Flood Study Report of May 2024, land in the Georges River catchment susceptible to the probable maximum flood in six named local government areas, and land in a flood planning area in twenty-three named regional local government areas. Flood-prone land elsewhere in Greater Sydney is not excluded from the provisions at all.

Within a conservation area every part of the fabric, its context, and the concept of contributory buildings and spaces are treated as intrinsic and cumulative to significance. The loss of value from any proposed change must therefore be weighed against the continued utility of the building stock. In practice that weighing is not performed against any stated measure. There is no scale on which the two are commensurable, no threshold at which a change becomes acceptable, and no record of the balance struck.

A substantial part of the case for preservation rests on an assumption that contemporary design and construction cannot produce work of comparable merit, combined with a concern that the stock of buildings of heritage value is finite and diminishing. Neither proposition has been tested. In a country with roughly two centuries of European-tradition building stock, the effective heritage spectrum is narrow, and the criteria applied are those of that tradition.

Aboriginal cultural heritage sits outside the frame entirely. It is assessed under Part 6 of the National Parks and Wildlife Act 1974 (New South Wales) and recorded on the Aboriginal Heritage Information Management System, a separate instrument with separate criteria and a separate decision-maker. It does not enter the character assessment that governs what may be built in a heritage conservation area. Sixty thousand years of occupation and two centuries of European building are assessed by different regimes, and only one of them determines built form.

Heritage value is also relative to place and period, which is a reason for caution rather than an argument against protection. What is protected here is protected elsewhere too: England has 8,167 conservation areas, and the stock they contain is very largely the nineteenth and early twentieth century terrace. The point is not that the British would not value these buildings — they plainly do — but that designation follows the preferences of those already resident, and that this has been measured. In England the share of degree-educated residents predicts the share of land designated, and new designations at the margin produce no significant price effect inside the boundary while raising values just outside it. Those who obtain the amenity are not those who bear the restriction.

Where the effect of designation has been measured, the findings are uncomfortable for both positions. The largest English study, covering 1,088,446 transactions across all conservation areas, found a substantial price premium inside them but "no statistically significant designation effect" — the premium is the architecture and the location, not the regulation. In New York, historic districts reduce the share of lots seeing new construction by around three percentage points and hold approximately 119 million square feet of permitted but unused residential floor area, equivalent to some 119,000 dwellings. On the other side, the best-identified estimate of heritage benefits, from the Netherlands, finds benefit-cost ratios between 1.14 and 4.28 — although it values heritage investment rather than heritage regulation, and is therefore not authority that designating a suburb passes a cost-benefit test.

The submission does not propose that heritage protection be removed. It proposes that the designation of an area and each building within it, like every departure from a development standard, be accompanied by a stated derivation and published evidence — that the benefit claimed be identified, that the cost forgone be counted, and that the balance be recorded. That is what this Commission recommended in 2006, and what it recommends again in the interim report of this inquiry. The weight of these wholesale decisions must be attributed its appropriate cost, through cost benefit analysis, not done on a cost free basis derived from some assumed 'goodness'.

Appendix I — A suggested new system (section 10)

The Shergold Weir report suggested the reintroduction of the position of "clerk of works" on significant projects. [Recommendation 18]. But this recommendation was never even considered - as that would mean the government of the day would have to take on responsibility for what happens on site. As it stands now the governments and bureaucracies can publicly blame the builder… not the system and remove themselves from media and public criticism. But the bureaucratic system overall wears the issues… all of them. Things end up in the various hugely expensive and slow overworked tribunal and court systems. Lost time in avoiding taking responsibility and dealing with faulty work and public complaints and image issues cost billions every year.

Having given this some thought over the last decade or so , here is “a suggestion”. Much as we all loathe all forms of establishment unaccountable bureaucratic monoliths, I believe it will take a Thief to Catch a Thief and we need to Fight Fire with Fire to right the toppling system.

So I suggest we form an entity, a **National (or State) Housing Authority** whose role it is to deal with all the plethora of bureaucratic hurdles that have been set up - put it back on the bureaucrats to move a project through their own systems. Maybe this is part of the proposed various Building Commissioner positions being introduced around the country under various bills like the NSW the Building Bill 2024.

A national or state run project management system where a new home buyer goes to, to get a house built. Either with or without plans or place and with or without land. The NHA appoints a designer and sorts the design with the owners in consultation with a project officer adept at the requirements of the planning and development system and obtains all approvals, funding, contracts and appoints a builder at a set cost and manages the project.

On completion the house is sold to the new owner. Contactless. At the full price. The builder is protected from random owner interference, variations, cash flow withholding by owners and banks. Those are the three main things that blow out building costs and times (apart from the weather which prefabrication addresses at least in some part, and global supply chains which just have to be worn and covered by contracting rise and fall arrangements) . Yes, the owner bears the ultimate actual cost, but the cost is fully fixed before commencing and controlled and the Authority bears the risk of bureaucratic cost blowouts, which it can manage itself. It ceases to be a Zero Sum Game between owner and builder to see who can win off the other. Costs are set by nationally set contracts and predictable, known, reasonable pricing schedules. And the lost $billions from appeals and disputes and holding costs and lost time and stress and consultancy costs tips into the authorities accounting balance buffer to offset the tricky ones.

I suggest that ALL projects should have a clerk of works – employed by the National Housing Authority. Paid for by the owner. Employed Trained and run by the independent government authority and selected from experienced qualified builders from industry nominations - with suitable authority and powers. And employing only trade qualified, site experienced builders who know what they are looking at and looking for. No pointy shoes.

This cant really be done by local councils – they are too small and liable to corruption and under resourced - a state or better still a federal authority, well resourced and respected. This needs to be a proper ‘Build Police’

This is a matter of Government taking responsibility for its own industry regulation. The industry turns over hundreds of billions of dollars and likely pays tax in the eight figure bracket, legal issues tie up the courts and expend millions, maybe even billions in legal fees, lost time and holding costs and damages losses. If it costs a bit to run an authority and employ and train a few thousand Clerk of Works then that is a fair and reasonable cost of business for construction. The reduction in defects, and costly litigation and court costs and improvements in health and safety and durability of our buildings would probably cover the expense anyway if properly accounted for.

If a defect gets through, then fair cop, the Authority self insures itself for warranty insurance which kicks in and pays for remediation and the builder is sanctioned, fined and loses license points like a drivers license system etc. (on that a national builder licensing system is a must. State borders these days are completely arbitrary and irrelevant for everyone except politicians… and license vehicles and drivers the same)

The Building Inspector, Architect or Clerk of Works come around pretty much daily on larger projects and regularly for smaller builds. Their ever presence keeps things on their toes. They are knowledgeable and experienced and can give advice and directions and issue notices if needed.

And it's a great thing for retired builders to do - with respect value and integrity – working for a respected government authority with the same integrity and authority as the police system.

Get rid of the PCA - private building surveyors concerned only with the Professional Indemnity Insurance renewal premiums - that system has comprehensively failed and they have become unworkable paper shufflers insurance wise in any case.

This should not be another isolated bureaucratic Building Commissioner's Office full of academics and inexperienced desk workers. The system needs hands on involvement and integrity.

As to process an area based Authority project manager is assigned to obtain any necessary reports and approvals and insurances and certifications. The Authority project manager ensures warranty insurance, workers compensation, OH&S leave and long service leave, trade certificates, subcontractor certification and so on and so forth are all in place and properly functioning.

A single form of contract between NHA and Builder and a separate one between NHA and owner, with clear and concise known and agreed terms and a prohibition on legal action. There is almost no legal action on real estate sales – it is buyer onus – and this is the same thing… the new owner can inspect and buy and if they don't want the end result they walk away and it gets sold to someone else. The market needs houses- anything will sell. Quickly. And appropriate finance arrangements are managed by the NHA.

A builder is assigned by tender or local knowledge, the scope of works is severely curtailed by the contract managed by the Authority, and the builder is just building – not managing a vast plethora of bureaucracy or dealing with the vagaries of clients. The client visits if they wish with the clerks of works and negotiates with the authority over changes or design or fitout issues. Random owner directed changes or instructed Variations to the issued build scope, which are widely acknowledged, and certainly in our experience, the most significant cause of disputes and costs overruns, are not the builder's issue and are fairly professionally and responsibly managed. The Zero Sum Game played by many owners and builders is eliminated as a project risk.

There can be a separate non authority 'Owner Builder' process, as there is now, for those who have the resources and competence to manage the whole process themselves, with an improved owner builder license training and certification process and good luck to them. And it needs to be made clear that an owner builder permit applies only to their own project that the permit applies to. We have had people working on some of our sites who said ridiculously they were allowed to contract on other projects as they are ‘owner builder licensed’.

Appendix J — Detailed building costs breakdown

This appendix reproduces the detailed companion to Figure 26 (Appendix C, section 4.1): the author's full disaggregation of the delivered cost of a small residential building, including the nominal percentage allocations behind the 63% estimate discussed at section 4.1 and response 2.1.6.

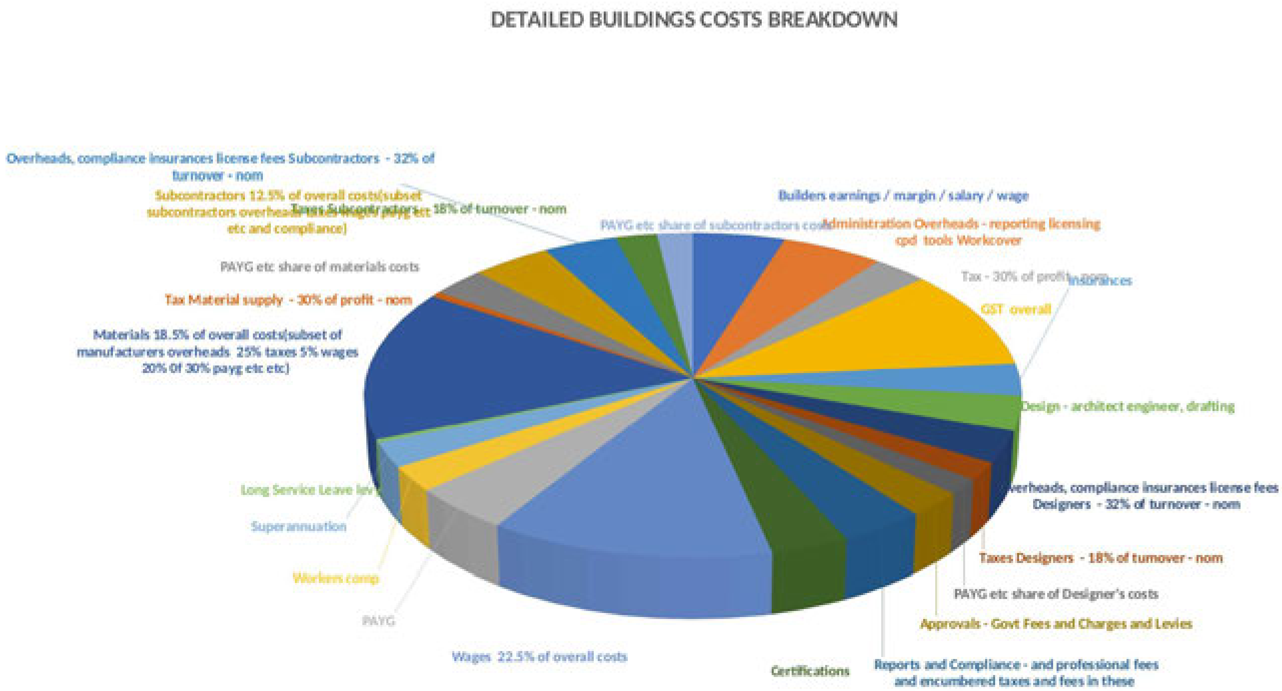

Figure J1 — Detailed buildings costs breakdown: the same estimate as Figures 8, 25 and 26, fully disaggregated into the author's nominal component allocations, from the author's conference presentation. Percentages are nominal estimates pending the method note (section 4.1).

Appendix K — The four refusal phrases: origin, spread and arbiter (response 3.1.2)

This appendix sets out the record behind response 3.1.2: where each of the four subjective phrases on the case-study refusal notice came from, how each spread from the context it was written for to the assessment of ordinary dwellings, what definition (if any) each now has, and who applies it.

11.1 "Design excellence": a central-Sydney bonus scheme, 2000

The term has a traceable origin, and it is not the one its present use implies. "Design excellence" entered New South Wales planning law on 3 March 2000, when Central Sydney Local Environmental Plan 1996 (New South Wales) was amended (Amendment No 8) to insert Part 3A, "Urban form and design excellence", under Lord Mayor Frank Sartor. It was a central business district instrument with two limbs. For buildings over 55 metres or sites over 1,500 square metres it required a development plan and asked "whether the building has been designed as the result of a design competition"; the reward for a winning design was a 50 per cent reduction in the heritage floor space the developer had to acquire (clause 28D(6)). The familiar 10 per cent height and floor-space bonus came later, in Sydney Local Environmental Plan 2005 (New South Wales), clause 10, and Sydney Local Environmental Plan 2012 (New South Wales), clause 6.21(7). The second limb, clause 28D(1), applied to every new building in the city centre and required the consent authority to "consider whether the proposed development exhibits design excellence", having regard to "whether a high standard of architectural design, materials and detailing will be achieved appropriate to the building type and location". The competition, the jury and the bonus were tools for prominent towers; the sentence about "a high standard of architectural design" is the part that travelled. The academic record attributes to the policy's author the aims of lifting design quality in the city centre, breaking the hold of a few large practices, reducing successful court appeals and compensating "for a lack of design expertise among the City of Sydney's staff".

From there it migrated outward in three steps, none accompanied by a State definition or model clause. In December 2007 the same author, by then Minister for Planning, wrote the template into Parramatta City Centre Local Environmental Plan 2007 (New South Wales), clause 22B, with a 10 per cent bonus for a competition-winning design. In December 2012 the City of Sydney applied clause 6.21 of Sydney Local Environmental Plan 2012 (New South Wales) to "development involving the erection of a new building or external alterations to an existing building" anywhere in its local government area, justifying the extension by reference to "significant new development" while the clause itself caught every building; by April 2025 its local planning panel was recording that "the development achieves design excellence" for two two-storey semi-detached dwellings on a 281-square-metre lot at Beaconsfield (D/2024/920). Other councils then copied the list of matters, dropped the competition and the bonus, and lowered the trigger: Blue Mountains Local Environmental Plan 2015 (New South Wales), clause 6.19, to any building on mapped land; Hornsby Local Environmental Plan 2013 (New South Wales), clause 6.8, as amended on 4 December 2020, to attached dwellings and multi dwelling housing regardless of height, the council's planning proposal explaining that the matters were "as relevant to dual occupancy development as to a tower in a town centre"; Inner West Local Environmental Plan 2022 (New South Wales), section 6.9, to buildings of 14 metres or more; and in 2024 a Sutherland Shire proposal for "all land" in the shire, since abandoned. The Department's drafting guidance for local plans, Practice Note PN 11-001 (10 March 2011), mentions design excellence once, as a permitted reason to vary a height limit. A control invented to decide which tower in the central business district deserved a bonus is now applied to a semi-detached cottage, in the same words, with no State test of what they mean.

11.2 Who applies it, and what the law requires them to know

Who applies the words changed as the words spread. Every clause makes the test "the opinion of the consent authority", and the Audit Office of New South Wales found in December 2022 that 96 per cent of development applications are determined by council staff under delegation. The Land and Environment Court of New South Wales has held that the opinion must be the decision-maker's own: forming it "by having regard to the evidence of the urban design experts alone" is not sufficient (Toga Penrith Developments Pty Ltd v Penrith City Council [2022] NSWLEC 117; Urban Apartments Pty Ltd v Penrith City Council [2023] NSWLEC 1094). Referral to a design review panel is compulsory for one building type only — apartment buildings of three or more storeys and four or more dwellings, under State Environmental Planning Policy (Housing) 2021 (New South Wales), sections 145 to 147. For a house, a terrace or a dual occupancy no instrument requires the assessing officer to consult anyone with a design qualification, and in the council assessment reports we have read, none did.

Nor does any law require the officer to hold one. Neither the Environmental Planning and Assessment Act 1979 (New South Wales) nor the Environmental Planning and Assessment Regulation 2021 (New South Wales) imposes any qualification, registration, certification, continuing-education or experience requirement on a person who assesses or determines a development application. "Planner" is not a registered or protected title in any Australian jurisdiction; the Planning Institute of Australia's "Registered Planner" is a voluntary membership grade, held by about a quarter of respondents to the Institute's own 2023 survey of the profession. The only expertise rule in the Act is for panel members, at section 2.18(7), and architecture is one of eleven alternative fields that satisfies it. By contrast the State does regulate the person who draws the building: the Architects Act 2003 (New South Wales), section 9, makes it an offence to use the title "architect" without registration, examination and continuing professional development, and section 29 of the 2021 Regulation requires an apartment building's design statement to come from "a qualified designer", meaning a registered architect. The asymmetry has been on the record from the start. Premier Carr's 2002 foreword to the Residential Flat Design Code introduced design review panels "to assist Councils improve the design quality of development proposals", and the Government Architect reported in 2011 that "in some areas assessment has been left to council staff, who are not always well trained". The remedy was built for apartment buildings and never extended to the buildings that make up most applications. What remains is a standard that no instrument defines, that the Court says must be applied by the decision-maker personally, and that the law allows to be applied by a person of whom it requires no design knowledge, skill or qualification at all.

The rest of the housing chain shows how the gap could be closed, and answers the objections. The Building and Development Certifiers Act 2018 (New South Wales) makes it an offence to carry out certification work without registration (section 5), requires a registered certifier to be adequately insured (section 26), prohibits certification work where the certifier has a conflict of interest (sections 28 to 30) and gives the Secretary disciplinary powers extending to suspension, cancellation and disqualification (sections 45 and 48); a certifier employed by a council must be registered like any other. The reasoning in 2018 was that a person exercising judgement over the safety, cost or amenity of housing should be demonstrably competent and accountable. It has never been applied to the decision that sits upstream of every certificate. Two objections deserve a fair statement. Councils face a shortage of planning staff, and a registration requirement could shrink the pool; that is the reason for a transitional pathway for serving officers and for reducing, in parallel, the number of decisions that depend on individual discretion at all — and it is the objection that was made to certifier registration in 2018 and to builder licensing before it, which the system absorbed in each case. And a qualification does not guarantee judgement; true, but it establishes a standard against which judgement can be measured, a body that can act on its absence, and a professional duty that runs to the legislation rather than to the employer. That is the whole of the case for registering anyone, and it has already been accepted for every other participant in the chain.

11.3 "Desired future character": a zone-less experiment, 2000

The other three phrases on the refusal notice have different pedigrees and, if anything, less content. "Desired future character" is the only one that ever had a statutory home. It entered New South Wales law in Warringah Local Environmental Plan 2000 (New South Wales), gazetted 5 December 2000 — an experimental plan with no zones, in which each of 73 localities carried a written "desired future character" statement and the consent authority had to be "satisfied that the development is consistent with the desired future character described in the relevant Locality Statement" (clause 12(3)). That instrument was candid about the limits of the idea: the same subclause provided that "nothing in a description on desired future character creates a prohibition on the carrying out of development", and clause 18(2) warned that "strict compliance with development standards, however, does not guarantee that the development is consistent with … the desired future character of the locality". The term was not defined there and has not been defined since. State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (New South Wales) carried it into State policy in 2002 for apartment buildings in "precincts undergoing a transition", and it survives in Schedule 9 of State Environmental Planning Policy (Housing) 2021 (New South Wales) as "the existing or desired future character of the street and surrounding buildings". The Standard Instrument (Local Environmental Plans) Order 2006 (New South Wales) does not use the word "character" at all; the phrase enters an ordinary local plan only through objectives the council writes for its height and floor space ratio clauses, and reaches a dwelling only through a development control plan precinct statement. When a council's use of the term was tested, the Chief Judge of the Land and Environment Court held that the plan "has not defined the meaning of the term 'desired future character'" and that its content had to be derived from the plan's own zoning, objectives and development standards, evolving with what the council itself approves (Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115 at [44]; the same judgment's holding that character precedes the numeric standard is set out at Appendix G, section 8.6); the council's attempt to legislate its preferred interpretation back was refused a Gateway determination in August 2022. The Court's working rule since is that a proposal which complies with the numerical controls carries "an expectation that it has achieved the objectives of the controls", character among them (Gunnamatta Bay Holdings Pty Ltd v Sutherland Shire Council [2025] NSWLEC 1230 at [139]). Against two terrace-form dwellings of a scale consistent with the surrounding terrace pattern, "desired future character" was therefore a ground that the plan does not define, the Standard Instrument does not contain, and the Court presumes satisfied.

11.4 “Sympathetic infill”: a conservation-charter note since withdrawn

“Sympathetic infill” is not a planning term at all but a heritage-conservation one, and its own authors have retreated from it. The word “sympathetic” appears neither in the Heritage Act 1977 (New South Wales) nor in the standard heritage clause of every local plan (Standard Instrument clause 5.10, which asks only that the consent authority “consider the effect of the proposed development on the heritage significance of the item or area concerned”). Its source is the explanatory note to Article 22 of Australia ICOMOS’s Burra Charter in the 1999 revision — “New work may be sympathetic if its siting, bulk, form, scale, character, colour, texture and material are similar to the existing fabric, but imitation should be avoided” — a note the 2013 revision deleted, replacing it with “New work should respect the significance of a place … Imitation should generally be avoided”, so that the word now appears nowhere in the Charter. It reached council practice through the Heritage Office’s 1996 statement-of-heritage-impact template (“Is the new development sympathetic to the heritage item?”), the Local Government Heritage Guidelines of 2002 and the joint Heritage Office and Royal Australian Institute of Architects guide Design in Context (2005), each of them addressed to work affecting a place of assessed significance and each insisting that new work should not “directly copy the architecture of the existing buildings”. By the time it reached the Leichhardt Development Control Plan 2013 it had become an objective for every new building in a mapped area — “new buildings are sympathetic in scale, form, architectural detail, fenestration and siting to the Heritage Conservation Area” — with no definition, applied by an assessing officer of whom no heritage qualification is required. The only systematic review of New South Wales conservation-area controls — the 2023 study discussed at Appendix G, section 8.8 — lists “sympathetic” among the “diffuse subjective terms” by which streetscape character is described. England’s equivalent, in the National Planning Policy Framework, at least carries its own limit: development should be “sympathetic to local character and history … while not preventing or discouraging appropriate innovation or change (such as increased densities)”. No New South Wales use of the word carries that clause.

11.5 “High quality urban form”: an aim copied between councils, 2012

“High quality urban form” is the youngest of the three and has no statutory existence in the applicant’s area at all. “Urban form” is a descriptive term from urban morphology — a way of describing what is there, not a standard for what should be — and no New South Wales statute, instrument, dictionary or Government Architect design guide defines it. It entered Sydney planning in the same amendment of 3 March 2000 that created design excellence, when the Central Sydney plan’s aim was rewritten to “the achievement of a high quality of urban form and design in buildings”, and became a Standard Instrument aim in Sydney Local Environmental Plan 2012 (New South Wales), clause 1.2(2)(j) — “to achieve a high quality urban form by ensuring that new development exhibits design excellence and reflects the existing or desired future character of particular localities” — a sentence Strathfield copied almost word for word in 2013. Inner West Council adopted it in its draft plan of 26 May 2020 (clause 1.2(2)(i), “to achieve a high-quality urban form and open space in the public and private domain by ensuring new development exhibits architectural and urban design excellence”), and its officers recommended refusal of a second storey on a Newtown terrace in March 2022 partly because the design was “not considered to promote a high standard of design, contrary to aim i)” of that draft. When the plan was made on 12 August 2022 the words became “a high quality urban place”. None of the three predecessor plans — Marrickville 2011, Leichhardt 2013, Ashfield 2013 — had used “urban form”; the Standard Instrument contains neither that phrase nor “high quality”; and an aim of a plan fixes no requirement or standard within the meaning of section 1.4 of the Environmental Planning and Assessment Act 1979 (New South Wales). A phrase that is not in the made plan, is defined nowhere and is not a standard was nonetheless listed as a ground of refusal.

11.6 What the four have in common

Set side by side, the four phrases on the notice come from four places — a 2000 city-centre bonus scheme, a 2000 zone-less experimental plan, a 1999 conservation-charter footnote since withdrawn, and a 2012 aim copied from one council to another — and share one property: none is defined where it was applied, and none can be measured by an applicant before lodgement. The Department of Planning, Housing and Infrastructure’s own discussion paper on low-rise housing reform (May 2026) proposes to replace development control plan controls with numerical standards, each carrying stated objectives, on the reasoning that “an objectives-based approach would reduce ambiguity for applicants and consent authorities, limit opportunities for lobbying or selective intervention”. The word “character” does not appear in that paper. That is the direction this submission supports (response 3.1.2), and the case study at Appendix C, section 4.2, is the reason.