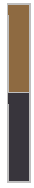




**NATIONAL
TRUST**



AUSTRALIAN COUNCIL OF NATIONAL TRUSTS

Submission in response to the interim report on housing supply regulation

INQUIRY Productivity Commission inquiry into housing supply regulation

RESPONDING TO Interim report of July 2026

SUBMITTED BY Australian Council of National Trusts, the national body of the National Trust
movement

LODGED September 2026



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Chair, Australian Council of National Trusts

[Redacted]

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Contents

A. Executive summary	3
B. The Council and the National Trust movement	8
C. What the interim report says about heritage.....	9
D. How the Commission reached its conclusions	10
E. The evidence in Box 2.2 examined.....	12
F. What heritage overlays and conservation areas are, and how they are made	19
G. The Australian evidence that heritage creates value.....	23
H. The international evidence that heritage creates value.....	26
I. Heritage areas are dense, and they are delivering housing	30
J. Heritage is not the binding constraint on supply	33
K. The Commission's cost benefit proposal	34
L. The environmental and climate dimension	38
M. International obligations and international practice	38
N. Responses to the information requests	39
O. A constructive path to conserve and build	41
P. What the Council asks of the Commission.....	43
References	45

A. Executive summary

1. The Australian Council of National Trusts (the **Council**) submits that the Productivity Commission's interim report on housing supply regulation of July 2026 (the **interim report**) is, in its treatment of heritage, a very problematic and flawed document, is fundamentally erroneous in its purported analysis, lacks basic academic rigour and that it should not be allowed to progress to final form as it stands. The Chair and Commissioner's heritage findings rest on a poor reading of a small number of sources, several of which say the opposite of what the interim report attributes to them, and on no analysis of the benefits of heritage protection at all, in an inquiry whose terms of reference required that those benefits be considered. The interim report is a concerning example of the Commission straying beyond its own expertise. This submission responds in particular to the treatment of heritage in Box 2.2, Table 1.1 and reform directions 2.1 and 2.5 of the interim report, and it asks the Commission to withdraw those passages, to re examine the material on which they rest, and to hear from the heritage sector before the final report is written.
2. The interim report proposes that "blanket heritage areas should be replaced by heritage listings for specific buildings or small areas", that each listing be "justified by cost-benefit analysis", and that there be "more robust mechanisms to review and delist buildings" (p. 8). It asserts that "the extent of heritage overlays in Australian cities likely exceeds the benefit they provide" (p. 41). In its statement of best practice principles it characterises area based heritage protection as "allowing 'heritage' or 'cultural' value to be an excuse to prevent development" (p. 28). Reform direction 2.1 would allow three storey development as of right across all residential land, with the only heritage exception being for "heritage listed buildings" and even then only "where the benefits of exceptions outweigh the costs" (p. 7), so that heritage conservation areas and heritage precincts, as distinct from individually listed buildings, would receive no exception at all. Adopted together, these directions would dismantle the system of precinct based conservation that every Australian jurisdiction has built by statute over fifty years, and that every comparable country maintains.
3. The heritage findings of the interim report are wrong, and they are wrong because the work that would have been needed to make them was never done. They occupy two pages, rest on ten sources and five industry submissions, and were reached without any engagement with a heritage council, heritage agency, National Trust, Australia ICOMOS body or other organisation whose purpose is heritage. When the ten sources are examined one by one, as section E of this submission examines them, several are found to say the opposite of what the interim report attributes to them, one does not contain the example for which it is cited, and the rest consist of a theoretical model of a different instrument in a different country, a think tank paper whose central comparison is wrong by two orders of magnitude, and the opinions of industry bodies whose members would

profit from the removal of the controls. The Council makes these criticisms with regret, because it has worked constructively with the Commission before and because the housing problem the Commission has been asked to address is real. An inquiry that sets itself the standard of “welfare maximising” regulation (p. 23) must, however, be held to that standard when it proposes to remove protections that Australians have repeatedly said they want.

4. The process by which the heritage conclusions were reached could not have supported them. The Commission received its terms of reference on 28 May 2026 and published the interim report at the end of July, a period it describes as “the limited timeframe available for engagement” (p. vi). Among the 100 submissions, 40 consultations and 20 roundtable participants recorded in Appendix A there is not one heritage council, heritage agency, National Trust or Australia ICOMOS body, and no organisation whose purpose is heritage. The two roundtables were held with the housing industry and with housing academics. The terms of reference direct that the inquiry “should also consider the benefits of the regulations and their objectives” (p. iv). On heritage the interim report does not quantify, estimate or even describe a single benefit. Its statement that heritage protections “are grounded in protecting history and community identity” (p. 26) is the whole of its treatment of the benefit side, and a single sentence of acknowledgement followed by two pages on costs is not the consideration of benefits that the terms of reference require.
5. The one number on which the interim report’s heritage case rests, the claim that removing broad heritage controls “could increase significant infill development within 10km of Melbourne’s CBD by around 17%” (p. 41), is not a modelled estimate of anything. It appears to be a calculation performed on two figures taken from a Grattan Institute report, namely that 29 per cent of residential land within ten kilometres of the CBD carries a heritage overlay and that overlay sites were about half as likely to have had projects of ten or more dwellings between 2017 and 2022. If heritage sites are assumed to develop at the non heritage rate, output rises from 0.855 to 1.0 of the counterfactual, an increase of 17 per cent. The comparison on which this rests is cross sectional, excludes every project of fewer than ten dwellings, controls for none of the characteristics that cause older, subdivided, high value fabric to be placed in overlays in the first place, and treats a permit trigger as if it were a prohibition. The Commission itself concedes that the estimate is “indicative” and may reflect “other site characteristics” (p. 41), and then proceeds as though it were a finding.
6. The sources cited in Box 2.2 do not say what the interim report says they say. The interim report cites Fifer (2025) for “evidence suggesting that the costs of restricting development vastly exceed the benefits of heritage listing” (p. 42). Fifer’s study, commissioned by Heritage NSW, is a discrete choice experiment among more than 4,000 New South Wales households that measures benefits only. It found willingness to pay for heritage conservation of between \$9 and \$198 per household per year and contains no

estimate of costs and no cost benefit comparison. The report cites Buxton, Hurley and Phelan (2015) for the proposition that heritage controls reduce potential dwellings. That study concluded the opposite of what the Commission uses it for, namely that heritage exclusions remove about five per cent of lots, that their effect on yield is “relatively small”, and that “Melbourne can double its population while maintaining its stock of heritage buildings and high amenity”. The report cites the Business Council of Australia’s submission for “many examples of heritage overlays being used to protect low value sites, such as car parks” (p. 42). That submission contains no such example, and the Centre for Independent Studies paper on which the Commission otherwise relies identifies one car park. The report relies for a proposition of New South Wales law on a law firm’s client note rather than the judgment of the Land and Environment Court, and omits that the judgment required the Minister to determine heritage significance before weighing hardship. It cites a calibrated theoretical model of Auckland’s special character areas, which are amenity controls on low density zones kept separate from Auckland’s heritage overlay and whose authors warn that their estimates “cannot readily be generalised to other cities”, as though it measured Australian heritage law.

7. The instruments that the interim report describes as “blanket” protections “applied without benefit assessments” do not exist in Australian law, because heritage overlays and heritage conservation areas neither prohibit development nor are applied without assessment. In Victoria the Heritage Overlay provides that “a permit is required” for demolition, buildings and works (clause 43.01-1), sets out decision guidelines, permits otherwise prohibited uses where that assists conservation, and operates within a planning scheme that must be decided “in favour of net community benefit” (clause 71.02-3). Every overlay is applied by a planning scheme amendment supported by a heritage study, a statement of significance and gradings of significant, contributory and non contributory buildings, exhibited for public submissions, reviewed by an independent panel and approved by the Minister. Since June 2026 the Victorian Local Heritage Guidelines require a strategic assessment that balances objectives in favour of net community benefit before an overlay is applied. The position in every other jurisdiction is the same in substance. Mechanisms to amend or remove listings already exist in each Act. Heritage Victoria refused four heritage permits in 2020–21, and the works it approved or exempted in 2021–22 were worth about \$1.25 billion, some 3.1 per cent of all building permits in the State. A control that is applied only after expert assessment, public exhibition, independent review and ministerial approval, that requires a permit rather than prohibiting works, and that refuses a handful of applications a year cannot fairly be described as blanket or as applied without assessment.
8. Heritage is not what is holding back the supply of housing, and the bodies charged with identifying the constraints on supply do not say that it is. The National Housing Supply and Affordability Council, the body the Commonwealth charges with identifying

constraints on supply, reported in 2025 that “the single biggest constraint on supply currently is that many housing projects are not commercially viable given current land, financing and development costs relative to expected sale prices”. Its 2025 report mentions heritage once, in a neutral list of the matters that planning schemes regulate, and its 2026 report does not mention heritage at all. Dwelling completions fell from 219,000 in 2016–17 to 173,000 in 2025, and higher density completions from 106,000 to 62,000, while heritage coverage was essentially unchanged, and a control that did not change over those years cannot explain a fall of a fifth in total completions and of more than two fifths in higher density completions. The Commission’s own research paper on housing construction productivity (February 2025) attributes the collapse in that industry’s productivity to the volume of regulation, fragmentation, weak innovation and workforce, without mentioning heritage. On the Commission’s own principle that “the most restrictive control often determines what can be built” (p. 37), the binding control in heritage precincts is the low density zone beneath the overlay, which the Commission proposes to reform in any event through reform directions 2.1 to 2.3 and 2.6.

9. Heritage areas are the densest parts of Australian cities, and they are adding housing faster than the cities around them. The City of Yarra, more than half of whose residential land carries a heritage overlay on the figure the Commission itself cites, added 13,148 dwellings between the 2011 and 2021 censuses, a rise of 36 per cent against 26 per cent across Greater Melbourne. The City of Sydney, with extensive conservation areas, added 29,175 dwellings, a rise of 31 per cent against 21 per cent across Greater Sydney. Central Park in Chippendale delivered 1,426 apartments on a former brewery site while retaining 33 heritage items. Harold Park delivered 1,250 dwellings around a state listed tram depot. Pentridge, Parkville Gardens and Bowden are delivering thousands more within heritage sites. The Victorian Government’s own study of housing outcomes in established Melbourne, which the Commission cites, records that housing change within heritage areas “is often the result of the adaptive re-use, and repurposing of former industrial and commercial heritage buildings for new residential purposes”. The densest and most valued urban districts in the developed world, Paris at more than 20,000 people per square kilometre, Barcelona’s Eixample at about 35,000, Amsterdam’s canal ring and Edinburgh’s Old and New Towns, are protected heritage areas.
10. The evidence that heritage creates economic and social value is abundant, and none of it appears in the interim report. The Commission’s own 2006 inquiry into the conservation of historic heritage places, a twelve month process with 416 submissions and public hearings in every capital city, found that “historic heritage places provide important cultural benefits to the wider community”, and the hedonic study in its appendices found no significant negative price effect from listing and a premium of about 14 per cent in Ku-ring-gai once location was controlled. Australians told the Allen Consulting Group in 2005 that heritage is part of the national identity (93 per cent), that too little is being done to protect it (62 per cent, against 3 per cent who said too much), and that they

would each pay \$39.50 a year to move from a regime that permits demolition to one that does not. Victorians' willingness to pay for the places on the state register alone capitalises to about \$1.1 billion. In England, conservation areas carry a premium of about nine per cent after controls across more than a million transactions. In the Netherlands, investment in heritage returns between 1.1 and 4.3 units of external benefit for every unit spent. In New York, designation raises values inside and beside historic districts in a study co authored by the economist most often cited against heritage protection. Cultural and heritage visitors stay a quarter longer and spend a fifth more than other international visitors, and cultural tourism is worth \$13.2 billion a year to Victoria alone.

11. The proposal in reform direction 2.5 that every heritage listing be justified by cost benefit analysis is wrong in principle and could not be carried out in practice. It counts as a social cost what is largely a transfer between landowners, because development displaced from a listed site is substantially recovered on the next best site. It treats the development potential of a site as the owner's property, when that potential is created by the planning scheme and its loss has never been compensated in Australian law, and it counts nothing for the externality that demolition imposes on everyone else. It ignores the irreversibility of demolition and the option value of retention, and it excludes the non use values that the Commission's own 2006 report recognised. It would require site by site quantification for some 186,000 overlay properties in Victoria alone, with a degree of discretion, delay and litigation that offends the Commission's own fourth principle of keeping the process simple. It applies to heritage a test that the interim report does not apply to environmental or hazard overlays. It contradicts the Commission's own reform direction 3.1, which asks governments to settle trade offs through area wide studies codified in planning schemes rather than site by site. And by tying protection to land value it would strip protection first from the places most valued and most at risk.
12. The heritage passages of the interim report also fall below the standard that the Commission's own Act sets for its work. The *Productivity Commission Act 1998* (Cth) requires the Commission to recognise "the interests of industries, employees, consumers and the community, likely to be affected by measures proposed by the Commission" (s 8(1)(e)), to ensure that industry develops in a way that is ecologically sustainable (s 8(1)(i)), to have regard to Australia's international obligations (s 8(1)(j)), which include Article 5(a) of the World Heritage Convention, and to provide in its reports "a variety of viewpoints and options" (s 8(3)). They also fall below the standard of the Commission's own 2006 heritage inquiry. The interim report's transparency statement records that AI tools were used in its research, note taking and editing (p. vi). Whether or not that explains why citations do not support the propositions attributed to them, the errors are of a kind that source checking would have caught, and the Council asks that every heritage citation be re verified before the final report is written.
13. The Council asks the Commission to withdraw the heritage limb of reform direction 2.5 and the heritage language of Table 1.1, to confine reform direction 2.1 so that it does not

override heritage conservation areas, to correct or withdraw Box 2.2, to publish the method behind the 17 per cent figure, to undertake or commission an assessment of the benefits of heritage protection of the kind the terms of reference require, to convene a heritage roundtable and hold public hearings before the final report, and to adopt in its place the “conserve and build” program set out in section O of this submission.

14. The Council supports more housing, including in heritage areas, and its program in section O shows how that can be achieved through codified exemptions for low impact works, by decoupling overlays from low density zoning so that density can be added where it does not harm significance, by directing development to non contributory sites, by funding adaptive reuse, and by resourcing councils to keep heritage studies current. The evidence set out in this submission shows that heritage and housing are complements rather than competitors, and the cities that Australians most admire, which without exception are cities that kept their heritage and built within it, show the same thing.

B. The Council and the National Trust movement

15. The National Trust movement began in Australia in 1945 with the formation of the National Trust of Australia (New South Wales), and Trusts now operate in every state and territory. The Council was formed in 1965 to represent the movement nationally, to coordinate the work of its constituent Trusts and to speak for them to the Commonwealth. The Trusts collectively care for more than 300 heritage places, most held in perpetuity, with around 350 staff and some 7,000 volunteers, and receive less than a tenth of their operating revenue from government. They maintain registers of significant places, make hundreds of submissions each year to planning and heritage processes, run the Australian Heritage Festival, and are the community voice in the heritage system that the interim report proposes to redesign without having heard from them.
16. The Council writes because the interim report’s heritage proposals are national in scope. They are addressed to every state and territory, they would affect every planning scheme and local environmental plan in the country, and they concern a system that Australians have built through their parliaments since the *Heritage Act 1977* (NSW) and the heritage provisions of the Victoria Planning Provisions of the 1990s. The Council also writes because the Commission has asked for evidence (information requests 2.1 and 2.3) and the Council has it.
17. The Council has read the interim report in full, and nothing in this submission should be taken as opposition to the objective of building more homes where people want to live. The National Trusts have supported adaptive reuse of heritage buildings for housing for decades and several of the largest housing projects on heritage sites in Australia have proceeded with Trust support. The Council’s objection is to a set of conclusions reached

without evidence, expressed in language that would be unremarkable in an advocacy pamphlet but is unacceptable in a report of the Commonwealth's independent economic adviser.

18. The remainder of this submission is organised in the following way. Section C records what the interim report says about heritage, section D examines the process by which those statements were reached, and section E examines each source on which Box 2.2 relies. Section F explains what heritage overlays and heritage conservation areas are and how they are made, and sections G and H set out the Australian and international evidence that heritage creates value. Section I shows that heritage areas are dense and are delivering housing, section J shows that heritage is not the constraint on supply, section K addresses the cost benefit proposal, and sections L and M address the environmental and international dimensions. Section N responds to the Commission's information requests, section O sets out a constructive program, and section P sets out what the Council asks of the Commission.

C. What the interim report says about heritage

19. The interim report refers to heritage on some fifteen pages. Its treatment can be summarised in seven propositions, each quoted so that there can be no dispute about what the Council is responding to.
 20. First, in the Overview the report gives heritage as its example of a binding land use control, stating that "land-use controls often impose binding constraints on new development, limiting the supply of new housing, even when prices (and hence incentives for development) are high. For example, heritage protections cover at least 50% of residential land in 50 suburbs across greater Sydney (NSW PEC 2024b, p. 42)" (p. 7).
 21. Second, reform direction 2.1 provides that governments "should allow up to 3-storey developments across all residential land, with exceptions made for areas with environmental protection, hazard-related overlays or heritage listed buildings only where the benefits of exceptions outweigh the costs" (pp. 7, 53). The exception is framed by reference to "heritage listed buildings". Heritage conservation areas and heritage precincts are not mentioned. On its face the direction would apply three storey as of right development across the terrace streets of Paddington, Carlton, Battery Point and North Adelaide.
 22. Third, reform direction 2.5 provides that governments should "Replace broad heritage protections with more targeted heritage listings with cost-benefit analysis and review processes. Blanket heritage areas should be replaced by heritage listings for specific buildings or small areas. Targeted heritage listings should be justified by cost-benefit analysis and there should be more robust mechanisms to review and delist buildings" (pp. 8, 57). The supporting text adds that "broad heritage controls including heritage
- Australian Council of National Trusts · Response to the interim report on housing supply

overlays and heritage conservation areas prevent development and will likely reduce the effectiveness of other priority reforms” and that “blanket heritage areas risk indiscriminate classification, protecting buildings with limited heritage value while imposing substantial costs on housing supply” (p. 55).

23. Fourth, in Table 1.1, which sets out what the “build mindset” principle is and is not, the report gives as an example of what the principle is “targeted heritage protections applied to buildings where the benefit to the community outweighs the development benefit forgone”, and as an example of what it is not “broad heritage overlays applied without benefit assessments, allowing ‘heritage’ or ‘cultural’ value to be an excuse to prevent development” (p. 28).
24. Fifth, Box 2.2, headed “Heritage controls constrain housing supply where people want to live” (pp. 41–42), contains the whole of the report’s evidence. It states that heritage overlays cover 21 per cent of residential land within ten kilometres of the Sydney CBD and 29 per cent in Melbourne, at least half of the residential land in 50 Sydney suburbs and up to 58 per cent of the City of Yarra. It concedes that overlays “can benefit the community by protecting important and unique land and buildings that have historic, architectural or cultural value” and then states that “the extent of heritage overlays in Australian cities likely exceeds the benefit they provide”. It offers the 17 per cent estimate for inner Melbourne, describes it as “indicative”, and adds that it may overstate or understate the effect. It states that “existing heritage listing processes are inconsistent and do not quantify the costs and benefits of protection appropriately”, that “there are many examples of heritage overlays being used to protect low value sites, such as car parks”, that “the benefit forgone (cost) from restricting development is often excluded completely, despite evidence suggesting that the costs of restricting development vastly exceed the benefits of heritage listing”, and that evidence from New Zealand character protections “which operate similarly to Australian heritage rules” finds negative welfare effects of \$391 to \$1,375 per household per year. It concludes that “it is therefore likely that housing supply is being restricted by heritage overlays beyond what is socially justified”.
25. Sixth, the report’s only statement on the benefit side is a single sentence in chapter 1, that “heritage protections are grounded in protecting history and community identity for the benefit of current and future generations (Heritage Council Victoria 2023)” (p. 26), together with the observation in section 1.1 that “where a site has cultural or historical significance, regulation can help preserve it for the future” (p. 22).
26. Seventh, the information requests ask “what impact would reducing the coverage of heritage overlays have on housing supply?” (information request 2.1, p. 16) and state that the Commission is “particularly interested in quantitative evidence on reforms to minimum lot size and reducing coverage of broad heritage controls” (information request 2.3, p. 17). The report states that in the final report the Commission “will further

consider the potential impacts of heritage controls on feasible housing supply” (p. 42). There is no corresponding statement that it will consider the benefits.

27. Two features of this material need to be noted before the sources are examined. The first is that the report’s conclusions on heritage are expressed as findings (“likely exceeds”, “it is therefore likely”, “prevent development”, “indiscriminate classification”) and carried into reform directions, while the evidence for them is expressly qualified as “indicative”. The second is that the report does not distinguish between a heritage overlay, which is a permit trigger, and a prohibition, notwithstanding that chapter 1 draws precisely that distinction between “regulatory bans” and “regulatory burdens” (pp. 5, 23). Under the Commission’s own typology a heritage overlay is a regulatory burden and not a regulatory ban, yet the report treats it throughout as though it were a ban.

D. How the Commission reached its conclusions

28. The Commission received the terms of reference on 28 May 2026, issued a call for submissions on 1 June 2026 with a closing date of 15 June 2026, and published the interim report on 27 July 2026. The Commissioners record their appreciation of participants “particularly given the limited timeframe available for engagement” (p. vi). The Council does not criticise the Commission for the timetable it was given, but a timetable of that kind is a reason for restraint in reaching conclusions rather than a licence for reaching them without evidence.
29. Appendix A lists 100 submissions, 40 consultations and 20 roundtable participants. The Council has read the three lists, and not one heritage council, state heritage agency, National Trust or Australia ICOMOS body appears in any of them, nor the Heritage Chairs and Officials of Australia and New Zealand, nor any organisation whose purpose is heritage. The only consulted body with the word heritage in its name is a Western Australian planning department. The roundtables, from which the report says it drew its prioritisation of reforms (p. 109), were held with industry bodies and with housing academics. There was no roundtable on heritage, no public hearing has been held or announced, and the only public forum on the interim report was a webinar on 30 July 2026.
30. The Council does not suggest that the Commission was obliged to seek out every affected interest before publishing an interim report, but two things follow from the record in Appendix A. The first is that the *Productivity Commission Act 1998* (Cth) requires the Commission, in the performance of its functions, to have regard to the need “to recognise the interests of industries, employees, consumers and the community, likely to be affected by measures proposed by the Commission” (s 8(1)(e)), and requires its reports to “provide a variety of viewpoints and options representing alternative means of addressing the issues” (s 8(3)). On heritage, the interim report presents one viewpoint, that of the housing industry and of a single think tank, and one option. The second is that

the terms of reference themselves direct that the inquiry “should also consider the benefits of the regulations and their objectives” (p. iv). That direction was not followed in relation to heritage.

31. The contrast with the Commission’s previous work on heritage could hardly be greater. In 2005 and 2006 the Commission conducted a full inquiry into the conservation of Australia’s historic heritage places, which took twelve months, received 416 submissions, held two rounds of public hearings in every capital city, one before and one after the draft report, surveyed local governments, and produced a final report of more than 450 pages. That report concluded that “historic heritage places provide important cultural benefits to the wider community, in addition to the use and enjoyment they provide to their owners and users” (Productivity Commission 2006, p. XVIII). Its draft proposal that statutory listing of private property should require the owner’s agreement was withdrawn after the second round of consultation, and its residual recommendation for an “unreasonable costs” appeal right was rejected by the Australian Government. The Commission therefore knows what a proper inquiry into heritage regulation looks like, because it has conducted one, and the heritage content of the interim report, two pages written in two months without a single heritage organisation among its participants, bears no resemblance to it.
32. The Commission’s expertise lies in economics, and the Council does not dispute it. The assessment of heritage significance is a specialist discipline with its own doctrine (the Burra Charter), its own criteria (the HERCON criteria adopted across Australian jurisdictions), its own profession and its own statutory institutions. Nothing in the interim report suggests that the inquiry team included, consulted or read that expertise. The propositions in Box 2.2 about how listing processes work, what overlays protect and what they prevent are matters of fact about a regulatory system. They are wrong, as section F shows, and they are wrong because the people who administer and practise within that system were not asked.
33. The interim report contains an “AI transparency statement” which records that “this report was prepared using the assistance of AI tools for purposes of general research, note taking, coding and editing” and that “PC staff reviewed all AI-generated outputs for accuracy and quality” (p. vi). The Council does not know which passages were drafted with that assistance, but it does know that the heritage passages exhibit the failures that unverified synthesis characteristically produces, in that a benefit study is cited for a cost finding, a submission is cited for an example it does not contain, a study whose conclusion is that heritage is not a metropolitan constraint is cited as authority that it is, a law firm’s client note is cited for a proposition of law, and a report on housing outcomes to 2016 is cited as covering 2017. These errors are catalogued in section E. Whatever their cause, they are errors that a reading of the sources would have prevented, and the Council asks the Commission to state in the final report the extent to

which AI tools were used in preparing the heritage material and to confirm that each citation has been re verified by a person against the source.

34. Finally, the Commission’s treatment of heritage should be measured against the standard it sets for others. The report criticises heritage listing processes because they “do not quantify the costs and benefits of protection appropriately” (p. 42). The report does not quantify the benefits of heritage protection at all, and its quantification of the costs is the arithmetic described in paragraph 5. It criticises councils for “subjective” judgments (p. 64), while its own judgment that overlay coverage “likely exceeds” its benefit is supported by no measure of either quantity, and it demands that heritage listings be justified by cost benefit analysis without having subjected its own recommendation to remove them to any analysis of that kind. A regulator that proposed a rule on this evidence would not pass the Commission’s own regulatory impact test.

E. The evidence in Box 2.2 examined

35. Box 2.2 rests on two Grattan Institute publications (Coates 2025 and Coates, Moloney and Bowes 2025), a report of the NSW Productivity and Equality Commission (2024b), a Victorian Parliamentary Library research note (Florence and Triscari 2024), an RMIT study (Buxton, Hurley and Phelan 2015), a Victorian Government report (DELWP 2018), a law firm’s client note (Hewitt and Hill 2017), a study for Heritage NSW (Fifer 2025), a Centre for Independent Studies policy paper (Tulip 2026), a New Zealand journal article (Greenaway-McGrevy and Jones 2025b) and five submissions to the inquiry. The Council has obtained and read each of them. What follows is a source by source account of what each says and whether the interim report has represented it accurately.
36. The statements that heritage overlays cover 21 per cent of residential land within ten kilometres of the Sydney CBD and 29 per cent within ten kilometres of the Melbourne CBD are accurately transcribed from the Grattan Institute’s *More homes, better cities* (Coates, Moloney and Bowes 2025, section 2.2). Three things should be said about them. The first is that a ten kilometre radius is a circle of about 314 square kilometres, which is about three per cent of the area of Greater Melbourne and less than that of Greater Sydney. The statistic describes the oldest part of the city, which is where the nineteenth century city was built and therefore where its heritage lies. That heritage overlays are concentrated where the heritage is does not show that they are excessive. The second is that the figure is a measure of land subject to a permit requirement, not of land on which development is prohibited or of dwellings forgone. The third is that the metropolitan figures are small. The Heritage Council of Victoria’s census of local heritage found 21,419 overlays covering about 186,000 properties across the whole of Victoria, of which 1,103 overlays are precincts, and the Heritage Council’s 2023 synthesis puts the share of Victoria’s building stock under an overlay at less than ten per cent. Greater Melbourne

alone had 2,057,482 private dwellings at the 2021 census. On any view, more than ninety per cent of the city is unaffected by the controls the Commission proposes to dismantle.

37. The “50 suburbs” figure is taken from the NSW Productivity and Equality Commission’s report *What we gain by building more homes in the right places* (2024b). What the interim report does not say is what that report says about heritage. It says that “a city’s heritage is part of its identity, and a big part of what makes it an attractive place to live”, that heritage protection delivers social and economic benefits ranging from tourism spillovers to cultural and educational value, citing the Productivity Commission’s own 2006 report, and that the answer is “a balanced approach that protects what is important, while allowing more people to live near and enjoy the city’s heritage and valued locations”. It recommends that heritage be protected “strategically”, and it does not recommend that conservation areas be replaced by individual listings, that listings be subject to cost benefit analysis, or that delisting be made easier. The interim report has taken the statistic from that report and left behind the conclusion its authors drew from it. The Council also notes that the Chair of the Commission, in the webinar of 30 July 2026, described the same statistic as “50 suburbs in Sydney where more than 50% of the houses are covered by heritage restrictions”. The measure is of residential land and not of houses, and the fact that the figure changed its meaning between the report and the webinar suggests that it has not been handled with the care a headline statistic requires.
38. The Yarra figure of “up to 58%” is attributed to a Victorian Parliamentary Library research note (Florence and Triscari 2024, p. 19). The Council accepts the figure for present purposes, and observes that the City of Yarra is the municipality in which the Victorian era working city survives most completely. It is also, as section I shows, one of the densest municipalities in Australia and one of the fastest growing in dwelling numbers, having added 13,148 dwellings between 2011 and 2021 at a rate above the metropolitan average. If Yarra is the Commission’s chosen example of heritage controls choking supply, the example shows the opposite of what it was chosen to show.
39. The interim report says that “PC estimates, based on Coates et al. (2025), suggest that removing broad heritage controls could increase significant infill development within 10km of Melbourne’s CBD by around 17% (assuming heritage-covered sites would then develop at the same rate as comparable non-heritage sites)” (p. 41). The interim report publishes no method for that estimate. The Grattan report contains two relevant figures, the 29 per cent coverage figure and a finding that “sites with heritage overlays were about 50 per cent less likely to have had significant infill development than those without over the period 2017 to 2022”, where significant infill development is defined in the footnote as projects of ten dwellings or more. If 71 per cent of land develops at a rate of one and 29 per cent at a rate of one half, current output is 0.855 of the output that would obtain if all land developed at a rate of one. Raising the heritage share to a rate of one increases output by 0.145 divided by 0.855, which is 17.0 per cent. The Council invites the Commission to confirm whether this is the “estimate”. If it is, the figure is not

an estimate of anything, but simply a restatement of Grattan's cross sectional comparison under an assumption that the comparison is causal.

40. That assumption cannot be made, because sites are placed in heritage overlays precisely because they carry older, intact, high value buildings on small and often irregular lots, which are the characteristics that make redevelopment least likely regardless of any control, and the Grattan comparison controls for none of them. It also excludes every project of fewer than ten dwellings, which is the form in which heritage precincts actually deliver housing, through rear additions, dual occupancies, secondary dwellings and small infill, and Grattan's own footnote concedes that "data are not available for smaller projects". The interim report acknowledges that the figure "may overstate the effect because some heritage land would remain protected through individual listings if broad controls were removed, and because some differences in infill rates may reflect other site characteristics" (p. 41). That acknowledgment is correct, and it is fatal to the use the interim report makes of the figure. A figure that the Commission cannot say is causal, that measures only projects of ten dwellings or more, and that assumes away the very reason heritage sites are heritage sites, is not a basis for a national reform direction.
41. The Council also draws attention to what the Grattan modelling actually assumes about heritage. As analysed by Dr James Lesh of Deakin University (Heritage Workshop, 12 September 2026), Appendix B of the Grattan report records that heritage items were excluded from the Sydney capacity analysis and that capacity on residential zoned sites in heritage conservation areas was reduced by an assumed 40 per cent, with an assumed 20 per cent reduction in mixed use heritage areas, an assumption carried over from a 2016 consultancy report. The heritage effect in that model is therefore an input chosen by the modellers rather than an estimate produced by the model, and any capacity uplift that the Commission attributes to removing heritage controls on the strength of that model is nothing more than the assumed parameter reappearing as a result. The Council asks the Commission, before it relies on the Grattan modelling in the final report, to obtain and publish the source and basis of the 40 per cent assumption.
42. The interim report says the 17 per cent figure "aligns with previous findings that heritage controls reduce the number of potential of dwellings (Buxton et al. 2015, pp. 30–31)" (p. 41). *Melbourne at 8 million: matching land supply to dwelling demand* was a study of whether established Melbourne could accommodate projected demand without further sprawl. Its authors deliberately excluded from their capacity model every lot in a heritage overlay and every lot built before 1945 along tram lines, because they took as a design premise that Melbourne's heritage should be kept. Having done so, they found that the exclusion reduced the number of developable lots by about five per cent, that "the overall impact of the Heritage Value Characteristic on possible future dwelling yields is relatively small", that "additional protection of Melbourne's pre-1950s architecture and built form will not remove large amounts of development potential", that established areas could accommodate more than 1.2 million new dwellings, and that

“Melbourne can double its population while maintaining its stock of heritage buildings and high amenity” (Buxton, Phelan and Hurley 2015, pp. 7, 9). The pages the Commission cites concern a sub analysis of large lots along tram lines. The study as a whole is the most complete demonstration in the Australian literature that heritage is not a metropolitan constraint on housing supply, and the Commission has cited it for the contrary.

43. The interim report says that “within-suburb analysis of housing development data from 2005 to 2016 in Melbourne’s local government areas of Yarra, Port Phillip and Stonnington – 44% of which is under heritage overlay – corroborates that the volume and density of development within heritage areas is significantly less than in locations not subject to the overlay (Victorian DELWP 2018, pp. 19–20)” (p. 42). The source is *Housing outcomes in established Melbourne 2005 to 2016*, not 2017 as the Commission’s reference has it. The passage relied on is two paragraphs of commentary on a map. It contains no “within-suburb analysis”, no dwelling counts for overlay areas, no controls and no test of significance. It opens with the sentence “heritage precincts and buildings provide appealing streetscapes and valued neighbourhood character as well as a cultural connection to the past”. It continues that “housing change, nonetheless, occurs within heritage areas which is often the result of the adaptive re-use, and repurposing of former industrial and commercial heritage buildings for new residential purposes”, that such reuse “is a global trend which helps heritage areas adapt”, that it “helps save in the cost of materials and energy while conserving the cultural characteristics of individual properties and areas”, and that “at times, buildings that are deemed non-contributory to the character of heritage precincts are approved for demolition by local authorities”. The report’s headline finding is that established Melbourne added 220,000 net new dwellings in twelve years. Nothing in it suggests that heritage overlays materially constrained that total, and the finding that heritage areas see less demolition is not a finding of harm but a finding that the overlay is doing what Parliament intended it to do.
44. The interim report states that “existing heritage listing processes are inconsistent and do not quantify the costs and benefits of protection appropriately. For example, in New South Wales lost sale value or benefit forgone are not on their own sufficient evidence of ‘hardship’ for the purposes of preventing a heritage listing (Hewitt and Hill 2017)” (p. 42). The citation is to a client note published by a law firm. The proposition of law is drawn from *Millers Point Community Association Incorporated v Property NSW* [2017] NSWLEC 92, a judgment of the Land and Environment Court of New South Wales (Molesworth AJ) concerning the Minister’s refusal to list the Sirius building on the State Heritage Register against the recommendation of the Heritage Council. The Council makes four points about the use the interim report makes of that case.
45. First, the statutory scheme does exactly what the Commission says heritage processes fail to do. Section 32(1) of the *Heritage Act 1977* (NSW) provides that the Minister may direct a listing only after considering, among other things, “whether the listing would

render the item incapable of reasonable or economic use” (s 32(1)(c)) and “whether the listing would cause undue financial hardship to the owner, mortgagee or lessee” (s 32(1)(d)). Section 33(2) permits an owner to object on those grounds. Section 38(1) permits the Minister to remove a listing where the item is not of State heritage significance or where the listing renders it incapable of reasonable or economic use or causes undue financial hardship. The cost side of the balance is therefore written into the Act itself. Second, the Court held that the Minister had erred in equating a diminution in sale value with financial hardship, because “hardship” directs attention to the financial position of the affected owner and not merely to the loss of a hoped for price (at [113]), and had erred in failing first to form a view on the heritage significance of the building, because the word “undue” requires hardship to be weighed against heritage value (at [113], [139]). The case is authority that significance must be determined before it is traded off, which is precisely the discipline the Commission says is lacking. Third, the interim report omits the sequel to the judgment, which is that on reconsideration in October 2017 the Minister again declined to list, on significance grounds. The building was sold in 2019 for \$150 million and has been converted to 76 apartments. The system the Commission describes as preventing development delivered, in its most celebrated recent case, the non listing, sale and redevelopment of the building. Fourth, an inquiry of the Commonwealth that relies on a proposition of law should cite the judgment that establishes it rather than a law firm’s summary of the judgment.

46. The interim report states that “there are many examples of heritage overlays being used to protect low value sites, such as car parks (BCA, sub. 71, p. 2; Tulip 2026, pp. 9–14)” (p. 42). The Business Council of Australia’s submission at page 2 says that “best practice heritage laws should be developed that restore the balance between building our cities and protecting unique and important heritage” and that the Council has “cited the use of heritage restrictions as tools by some actors to stymie development they oppose”. It contains no example of a car park, and none of its three attachments does either. The Centre for Independent Studies paper (Tulip 2026, Appendix A) contains twelve examples of what its author calls “heritage industry excess”. One is a car park, a 1970s structure in Carlton described in a photograph caption without address, date or listing mechanism. Of the twelve, only four concern overlays or conservation areas at all. The others are Commonwealth or State register items, listing proposals under consideration, or recommendations by consultants that were never adopted. The “many examples” to which the interim report refers therefore reduce to a single example, and the submission cited for it does not contain it.
47. The interim report states that “the benefit forgone (cost) from restricting development is often excluded completely, despite evidence suggesting that the costs of restricting development vastly exceed the benefits of heritage listing (Fifer 2025; Tulip 2026, p. 2)” (p. 42). Fifer (2025) is *The value of historic cultural heritage: insights from discrete choice experiments in New South Wales, Australia*, a study by Dr Simon Fifer of Community and

Patient Preference Research commissioned by Heritage NSW and presented in 2025. It comprises eight discrete choice experiments across eight heritage types, sixteen scenarios per participant, and a sample of 4,061 New South Wales residents surveyed in January and February 2024. It found that willingness to pay for heritage preservation “ranged from approximately \$9 to \$198 per household per year”, that participants “strongly valued heritage items that were older, publicly accessible (especially free access), in good condition, and of high historical significance”, and that the results “support cost-benefit analyses and better-informed heritage funding decisions”. It contains no estimate of the cost of heritage protection and no comparison of costs with benefits. It is the largest study of the benefits of heritage ever conducted in Australia, and the Commission has cited it as evidence that the benefits are small. The Council can only conclude that the study was cited without having been read.

48. The proposition that costs “vastly exceed” benefits is therefore the Centre for Independent Studies’ alone, and its paper reasons as follows. It assumes that more than 100,000 sites in each of Sydney and Melbourne are protected and that each forgoes a million dollars of development, giving a cost “in the hundreds of billions of dollars in each city”. It offers as illustration that heritage listed houses in Gordon “have a market value of about \$4 million” but that “if they were not heritage items, the sites would be sold for apartments, with a site value of about \$10 million”, and treats the \$6 million difference as the cost of listing. It then takes Fifer’s finding that households will pay about \$46 a year to conserve a portfolio of pre war houses, sums that figure over “a few hundred nearby households” to arrive at a benefit “in five figures”, and compares it with the cost. It also states that SGS Economics and Planning summed willingness to pay “over all heritage items in Victoria” and found the total value of the heritage stock “was only \$1.1 billion”, and concludes that “that is tiny compared to a cost in the hundreds of billions”.
49. Each step in that reasoning is wrong, beginning with the \$6 million, which is not a social cost, because the developer who cannot buy the Gordon house buys the next site, and the apartments are built there. The community’s loss is the difference in utility between the two locations, which Spiller and Lesh estimate at roughly a million dollars on the paper’s own figures, and which is offset by the amenity retained. The remainder is a transfer between landowners, and the Commission of all bodies should not confuse a transfer with a welfare cost. The benefit is not confined to “a few hundred nearby households”. Fifer’s and every earlier Australian study establish that heritage has existence and bequest value to people who will never visit it, which is why 82 per cent of Victorians and 93 per cent of Australians say it is important to protect heritage places even if they never visit them. The scale of the error can be shown on the paper’s own figures. The \$46 a year is a recurring payment, and capitalised at five per cent it is about \$920 a household, which across the households of a suburb the size of Gordon alone is of the order of \$3 million, three times the welfare cost of protecting the site once the transfer is

stripped out, and which across the State, as paragraph 70 shows, is of the order of \$2.8 billion. The \$1.1 billion figure is not the value of “all heritage items in Victoria” but SGS’s estimate of the capitalised value of the roughly 2,300 places on the Victorian Heritage Register, expressly excluding the 170,000 or more places in local overlays and expressly excluding collateral benefits such as tourism. The paper has compared a benefit computed over 2,300 places with a cost computed over 200,000, and the Commission has adopted the result. The paper’s recommendations, which include that councils be free to modify a listing “based on a simple majority vote of councillors”, are those of an advocacy organisation, and they reappear in substance as reform direction 2.5.

50. The interim report states that “evidence quantifying the costs of New Zealand character protections, which operate similarly to Australian heritage rules, finds negative welfare effects equivalent to a reduction of household income by \$391 to \$1,375 per year (Greenaway-McGrevy and Jones 2025b)” (p. 42). The paper, published in the *Economic Record*, does not quantify the costs of anything observed. It extends the monocentric city model to include an amenity generated by character protection and a floor area restriction, calibrates the model to Auckland, and reports the welfare effect the model produces under a range of parameters, expressed in New Zealand dollars. The protections modelled are Auckland’s special character areas, which the authors describe as overlays applied “almost exclusively” within the low density and single house zones retained under the Auckland Unitary Plan. They are not heritage listings and involve no assessment of heritage significance. Auckland’s historic heritage overlay is a separate control, which the authors treat as a separate variable. The welfare measure captures only the amenity capitalised into the prices paid by residents and excludes any non use value to the wider community. The authors themselves caution that “these estimates cannot readily be generalised to other cities, as the character premia are likely to be dependent on the relative scarcity of character protections, the precise nature of the protections, the quality of the dwelling stock, among other idiosyncratic factors”, and that “the abolition of character protections is not a panacea”. The interim report elsewhere distinguishes carefully between neighbourhood character controls and heritage controls (pp. 8, 56–57). In Box 2.2 it collapses the distinction, imports a theoretical result from a different country about a different instrument, and presents it as a measured cost of Australian heritage law.
51. The remaining citations are to submissions from Faith Housing Australia (sub. 79, p. 10), National Shelter (sub. 53, p. 8), Urban Taskforce Australia (sub. 69, p. 5) and Master Builders Australia (sub. 74, p. 9). Faith Housing Australia records that one project in Marrickville required a Land and Environment Court appeal after an interim heritage order was made. That is a single anecdote, and the project in question was approved. National Shelter recommends that jurisdictions audit and narrow overlays “in well-located areas”, citing the Grattan report. Urban Taskforce Australia complains that councils restrict development near contributory buildings and quotes a council

resolution. Master Builders Australia asserts that overlays are “frequently applied to broad areas rather than individual buildings or streets of heritage significance” and that “their geographic scope in Australian cities frequently exceeds what the underlying heritage values justify”, while conceding that “the benefits of heritage and neighbourhood character protections are real and legitimate”. None of these submissions contains data, and each records the opinion of a body whose members would benefit from the removal of the control. The Commission is entitled to receive such opinions, but it is not entitled to describe them as evidence, and it should not have cited the Master Builders submission as the sole authority for its own conclusion that supply is being restricted “beyond what is socially justified” (p. 42).

52. When the sources in Box 2.2 are tallied, the record on which the Commission has acted is this. The two coverage statistics are accurately transcribed, but they describe a permit requirement in the oldest three per cent of the city. The 17 per cent figure is a calculation presented as an estimate. The Buxton study is cited for the opposite of its conclusion. The Victorian Government report supplies two paragraphs of commentary on a map, which the interim report presents as a within suburb analysis. The law firm note stands in for a judgment whose holding and sequel cut the other way. The many car parks turn out to be a single car park. The Fifer study is a benefit study cited as a cost finding. The Centre for Independent Studies paper rests on a comparison that mismatches its numerator and denominator by two orders of magnitude. The New Zealand paper is a theoretical model of a different instrument in a different country whose authors warn against the use the Commission makes of it. The four industry submissions contain opinion and no data. On this material the Commission has concluded that a national system of heritage protection “likely exceeds the benefit” it provides and should be replaced, and the Council submits that no tribunal, court, regulator or academic referee would accept that conclusion on that record, and that the Commission should not have published it.

F. What heritage overlays and conservation areas are, and how they are made

53. The interim report’s vocabulary (“blanket”, “broad”, “indiscriminate”, “applied without benefit assessments”, “an excuse to prevent development”) describes no instrument known to Australian law. This section explains, jurisdiction by jurisdiction, what the instruments are, what they do and how they come to be applied, so that the Commission can correct the record in its final report.
54. In Victoria, the objectives of planning include “to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value” (*Planning and Environment Act 1987* (Vic) s 4(1)(d)), alongside the objective of providing for the fair, orderly, economic and sustainable use and development of land and of facilitating development in accordance

with those objectives (s 4(1)(a), (f)). Heritage conservation is therefore one of the objects of the planning system enacted by Parliament, and not a value that has found its way into that system as an “excuse”.

55. The Heritage Overlay is clause 43.01 of the Victoria Planning Provisions. Its purposes are “to conserve and enhance heritage places of natural or cultural significance”, “to conserve and enhance those elements which contribute to the significance of heritage places”, “to ensure that development does not adversely affect the significance of heritage places” and “to conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place”. Clause 43.01-1 provides that “a permit is required to” subdivide land, demolish or remove a building, and construct a building or carry out works, and it prohibits nothing. Clause 43.01-3 exempts works carried out in accordance with an incorporated plan, and clause 43.01-8 sets out the decision guidelines, which include the significance of the place, whether the proposal will adversely affect that significance, the applicable statement of significance and heritage study, and whether the location, bulk, form or appearance of the proposed building will adversely affect the significance. Clause 43.01-9 allows the responsible authority to permit an otherwise prohibited use where that will assist conservation, which is the mechanism by which churches, banks, warehouses and factories become homes.
56. The state planning policy on heritage (clause 15.03-1S) directs planning authorities to “identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme”, to “encourage appropriate development that respects places with identified heritage values” and to “support adaptive reuse of heritage buildings”. It names as its policy document *The Burra Charter: the Australia ICOMOS Charter for Places of Cultural Significance* (2013). Clause 71.02-3 requires planning and responsible authorities to “balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations”. Every heritage decision in Victoria is made under that instruction.
57. An overlay is applied only by an amendment to the planning scheme under Part 3 of the *Planning and Environment Act 1987*. The amendment must be authorised by the Minister, exhibited to the public with notice to affected owners (s 19), open to submissions which the planning authority must consider (ss 21–22), referred where submissions are unresolved to an independent panel appointed by the Minister which holds a public hearing and reports (ss 23–26), adopted by the council (s 29) and approved by the Minister (s 35), whose approval is subject to revocation by either House of Parliament (s 38). The Victorian Local Heritage Guidelines, published in June 2026 and replacing Planning Practice Note 1, require that the amendment be supported by a heritage study prepared by a qualified practitioner applying the HERCON criteria, a two step basic and threshold test of significance, a statement of significance for each place and precinct, and gradings of buildings within precincts as significant, contributory or non contributory.

They further require a “comprehensive strategic assessment” under Ministerial Direction 11 which must “balance these different objectives in favour of net community benefit”. The instrument the Commission calls “blanket” and “applied without benefit assessments” is in fact applied only after expert assessment, public exhibition, independent hearing, ministerial approval and a net community benefit test.

58. The same process is available to remove an overlay, and a planning scheme amendment can delete an overlay or a place from it, which councils do. The Victorian Heritage Register operates under the *Heritage Act 2017* (Vic), which provides for submissions and hearings before the Heritage Council on any proposed registration (ss 44–49) and for amendment or removal of a registration by the same process (s 62) or, for places destroyed or wrongly included, by an expedited process (s 63). In determining a permit application for a registered place the Executive Director must consider both “the extent to which the application, if approved, would affect the cultural heritage significance of the registered place” and “the extent to which the application, if refused, would affect the reasonable or economic use of the registered place” (s 101(2)(a)–(b)). The economic dimension is therefore written into the Act.
59. In New South Wales, the objects of the *Environmental Planning and Assessment Act 1979* (NSW) include “to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)” (s 1.3(f)), alongside ecologically sustainable development, affordable housing and good design. Heritage conservation areas are created by local environmental plans made under that Act through the planning proposal and gateway process, which requires a heritage study, public exhibition and the Minister’s or delegate’s approval. The compulsory heritage clause of the Standard Instrument (clause 5.10) provides that development consent is required for demolition, external alteration and new building in a conservation area, that the consent authority must consider the effect of the proposal on the heritage significance of the area, and that consent is not required for minor works that the council confirms would not adversely affect significance. Development in a conservation area is development with consent. The demolition of buildings that do not contribute to the area’s significance is routinely approved. As the New South Wales Minister for Planning put it in March 2024, “heritage and new housing can coexist”.
60. The *Heritage Act 1977* (NSW) is described in paragraph 45 above. It requires consideration of reasonable or economic use and undue financial hardship before any State listing (s 32(1)(c)–(d)), permits owners to object on those grounds (s 33(2)) and provides for removal from the Register on those grounds or where the item is not of State significance (s 38(1)). The cost benefit balance that the Commission says is absent is on the face of the statute.
61. The other jurisdictions provide for area based protection through statutory processes of the same kind. Tasmania’s *Historic Cultural Heritage Act 1995* provides for provisional

entry, sixty days for submissions, criteria for permanent entry and a procedure for removal (ss 16–22). The Northern Territory’s *Heritage Act 2011* provides for nomination, assessment, submissions, declaration and revocation (ss 20–37, 54–66). Queensland’s *Queensland Heritage Act 1992* sets criteria and a submission process for the State register and provides for local heritage registers within planning schemes. South Australia’s *Heritage Places Act 1993* and *Planning, Development and Infrastructure Act 2016* provide for State and local heritage places and, in the Planning and Design Code, for historic area and character area overlays supported by area statements. Western Australia’s *Heritage Act 2018* and the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* provide for local heritage surveys, heritage lists and heritage areas with consultation. The *Heritage Act 2004* (ACT) provides for nomination, provisional registration, consultation and cancellation. Every one of these regimes applies area based protection created by statute, subject to criteria, notice, submissions and review, and every one contains a path to removal. The interim report’s call for “more robust mechanisms to review and delist buildings” is a call for something that already exists in every jurisdiction, and the report does not identify what is deficient in any of them.

62. Two further points about how these instruments work should correct the impression the interim report gives. The first concerns gradings, because a heritage precinct is not a uniform prohibition. Within it, each building is graded, and the controls that apply to a significant building differ from those that apply to a contributory building and again from those that apply to a non contributory building, which can ordinarily be demolished and replaced. The Victorian Government’s own study records that non contributory buildings “are approved for demolition by local authorities” (DELWP 2018, p. 19). Precincts are the mechanism by which heritage controls are targeted. Replacing a precinct with individual listings of each contributory building would not reduce the number of protected buildings by one, but it would multiply the number of listing processes by the number of buildings.
63. The second point concerns why area protection exists at all, and the answer is that the significance of Australia’s nineteenth and early twentieth century suburbs lies overwhelmingly in the ensemble, in the consistent scale, setback, materials and rhythm of a street of terraces, villas or bungalows, the corner shops and hotels, the lanes, the trees. No single house in such a street would justify individual listing, but the street as a whole does. That is why the Burra Charter defines a place as “a geographically defined area” which may be “an urban area or town”, and why every comparable country protects areas as well as buildings. A regime that protected only individually listed buildings would protect the church and the town hall and permit the erasure of the town. The Allen Consulting Group’s national study for the heritage chairs and officials found exactly this, that “it is the collective heritage ambience, created by a systematic listing

strategy, that is the attraction rather than the benefits created by the protection of a specific residential or commercial place” (2005, p. 25).

64. The interim report also states that targeted listings should be “based on cost-benefit analysis, including consideration of cultural value to Aboriginal and Torres Strait Islander people” (p. 55). Aboriginal cultural heritage is protected in every jurisdiction under separate legislation (for example the *Aboriginal Heritage Act 2006* (Vic) and Part 6 of the *National Parks and Wildlife Act 1974* (NSW)), by different processes and with Traditional Owner decision making at their centre. Heritage overlays and conservation areas are instruments of historic heritage. Folding the two into a single cost benefit test would not strengthen the protection of Aboriginal heritage. It would subject it, for the first time, to a test of development value. The Council doubts that the Commission intended that result, and it illustrates the danger of writing about a system one has not examined.

G. The Australian evidence that heritage creates value

65. The interim report’s proposition that overlay coverage “likely exceeds the benefit” it provides is an empirical claim about benefits. This section sets out the Australian evidence on benefits, none of which is cited in the interim report, beginning with the Commission’s own.
66. The Commission’s own final report on the conservation of Australia’s historic heritage places (2006) found that “places of cultural significance enrich people’s lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences” (p. 11), that community members benefit “from knowing that the historic heritage place has been conserved, irrespective of whether the community member enjoying the benefit actually visits it” (p. 14), and that conservation enhances a community’s cultural capital, including “social capital, option, bequest and existence values” (p. 15). It acknowledged that these values have no observable market price and are difficult to quantify (pp. 132 and following). It did not conclude from that difficulty that they were small. The hedonic study in Appendix C of that report examined 712 sales in Ku-ring-gai and 578 in Parramatta and found that “generally, heritage listing does not have a significant effect (positive or negative) on the value of housing, when structural and locational attributes are taken into account” (p. 366), with a positive coefficient of 14.2 per cent in Ku-ring-gai once location was controlled (pp. 362–363). The Commission’s own work therefore establishes that listing does not depress the value of the listed property and that the benefits of conservation are real though hard to price, and the interim report cites none of that work.
67. The earlier Macquarie University study of Sydney’s upper north shore found that heritage listed houses sold at a premium of about 12 per cent over comparable unlisted houses and that the premium rose with the level of significance (Deodhar 2004). The

Allen Consulting Group's review of the Australian studies to 2005 concluded that where listing is applied systematically "property values have not been negatively affected by heritage listing (i.e. the impact has been neutral or positive)" (2005, p. vii).

68. *Valuing the priceless: the value of historic heritage in Australia*, prepared by the Allen Consulting Group in 2005 for the Heritage Chairs and Officials of Australia and New Zealand, surveyed 2,024 adult Australians using choice modelling. It found that 93 per cent of Australians regard heritage as part of the national identity, that 93.4 per cent agree that it is important to protect heritage places even if they never visit them, that 80 per cent say historic houses in their area are an important part of its character, and that 62 per cent think too little is being done to protect heritage against 3 per cent who think too much (pp. vii–viii, 27). Owners of heritage properties were more supportive of protection than the general population (Box 4.1, p. 30). Australians were willing to pay \$5.53 per person per year for each additional 1,000 places protected and \$39.50 per person per year to move from a regime in which demolition is permitted to one in which substantial modification is permitted but demolition is not (p. ix). A combined improvement scenario was valued at \$105.90 per adult per year, or about \$1.6 billion per annum nationally (p. x). The study also recorded that in 2004 domestic and international visitors spent \$7.8 billion on trips that included a historic heritage place and that 27 per cent of international visitors visited one (p. vii).
69. *The value of heritage*, prepared by SGS Economics and Planning and SurveyEngine in 2018 for the Victorian Department of Environment, Land, Water and Planning and the Heritage Council of Victoria, used choice modelling with 1,611 usable responses to value the places on the Victorian Heritage Register. It found that the capitalised value of the heritage services generated by those places is "approximately \$1.1 billion (falling within the range of \$1.05 and \$1.18 billion)" (p. 23), an annual flow of more than \$40 million against a Heritage Victoria operating budget of \$4.2 million (p. vi). It found that 79 per cent of Victorians agree government should protect heritage, 83 per cent that heritage is part of the national identity and 82.3 per cent that it is important to protect heritage places even if they never visit them (pp. 27–32). Replicating the 2005 national questions a decade later, it found that the values had held. As explained in paragraph 49, this is the study the Centre for Independent Studies misdescribes as valuing all heritage in Victoria. It values about 2,300 places, and the 186,000 properties under local overlays are additional to them.
70. The Heritage NSW study by Fifer described in paragraph 47, with 4,061 respondents, is the largest heritage valuation ever undertaken in Australia. Its finding of willingness to pay of \$9 to \$198 per household per year across eight heritage types, and of \$46 per household per year to conserve a portfolio of 500 locally significant pre war dwellings anywhere in the State, demonstrates that the value of local heritage is held by households across New South Wales and does not decay to zero with distance. Capitalised at five per cent, \$46 a year across the roughly three million households of
- Australian Council of National Trusts · Response to the interim report on housing supply

New South Wales is a present value of the order of \$2.8 billion for that portfolio alone. That is the study the Commission cites for the proposition that benefits are small.

71. The Heritage Council of Victoria's *State of heritage review: local heritage* (2020) surveyed all 79 Victorian councils and found that overlays cover 21,419 places and more than 186,000 properties, that community and council respondents identified "the protection that is provided through the Heritage Overlay" as the greatest strength of the system, and that the system's weaknesses are under resourcing and out of date studies, with only 34 per cent of councils having undertaken a heritage study in the previous three years (pp. 1–2, 17–21). Its 2023 synthesis, *Why heritage? A synthesis of evidence for the social, economic and environmental impacts of heritage*, prepared by Extent Heritage and Kate Clark, reviewed more than 200 Australian and international sources and found that over 90 per cent of buildings on the Victorian Heritage Register remain in active daily use, that existing buildings are the most sustainable option compared with new construction, and that repair and refurbishment create more employment than new building. The interim report cites the Heritage Council of Victoria for one sentence. The Heritage Council's evidence base answers the interim report's central claim, and the interim report does not engage with it.
72. Heritage controls do not freeze the places they cover, as the Heritage Council of Victoria's synthesis, drawing on the Council's annual reporting, shows. It records that Heritage Victoria refused four heritage permits in 2020–21, that the works covered by heritage permits and permit exemptions in Victoria in 2021–22 were worth about \$1.248 billion, or about 3.1 per cent of the value of all building permits issued in the State, and that more than 90 per cent of places on the Victorian Heritage Register remain in everyday use. Heritage Victoria issues about 170 permits and 900 permit exemptions a year. The same synthesis records that in 2019–20, for every building added to an Australian heritage register, 112 houses were demolished and 618 new houses were built. A system that refuses four permits a year and oversees more than a billion dollars of works is a system that manages development rather than one that prevents it, and the demolition figures show that the balance in Australian cities runs heavily towards demolition and new building rather than towards protection.
73. The same synthesis reviewed more than forty property price studies from Australia, the United States and the United Kingdom and found that buildings in historic districts, protected buildings and buildings near them generally sold at a premium or, at worst, at prices no different from those of comparable unprotected buildings. The studies set out in this section and in section H are consistent with that finding, and the interim report cites none of them.
74. Among the benefits that a cost benefit analysis of heritage must count are wellbeing effects, for which there is now a substantial quantified literature. Research for English Heritage and the United Kingdom Department for Culture, Media and Sport valued the

wellbeing effect of visiting heritage places at £1,646 per person per year for the average heritage visitor (Fujiwara et al 2014), estimated the saving to the National Health Service from heritage engagement at about £193 million a year (Fujiwara et al 2015), and recorded a 40 per cent increase in subjective wellbeing and a 60 per cent fall in stress after visits to historic places (Grossi et al 2019). The What Works Centre for Wellbeing's 2019 review of the evidence and Historic England's 2023 reviews of mental health and of attachment to historic places find consistent effects on belonging, pride of place, social connection and life satisfaction. These are the benefits the interim report describes as "community identity" and then values at nothing.

75. Across two decades and every survey the Council is aware of, between 79 and 93 per cent of Australians support the protection of heritage and a small single figure percentage think too much is done. The 2023–24 consultation on the draft New South Wales heritage strategy drew more than 1,750 contributions, 74 per cent of which identified development pressure as the principal challenge to heritage. A 2023 study of an Australian regional city found residents ranked heritage protection second of seventeen council services, behind only health (Spennemann 2023). The Council is not aware of any survey in which a majority of Australians has supported weakening heritage controls. The Commission's principle that regulation should be "welfare maximising" cannot be reconciled with removing a protection that the community, asked repeatedly and by different methods, has said it values and wants strengthened.
76. Tourism Research Australia's international visitor survey for the year to March 2019 recorded 2.75 million international visitors to Australia's historical buildings, sites and monuments, an increase of 70 per cent on 2010, and found that cultural visitors stay 25 per cent longer and spend 20 per cent more than other international visitors. In the year to December 2024, cultural visitors generated \$13.2 billion, or 32.9 per cent, of all tourism expenditure in Victoria, and international cultural visitors stayed an average of 32 nights. In the year to December 2023, 15.1 million culture and heritage visitors spent \$10 billion in New South Wales. Australia's cities compete for these visitors with the cities of Europe, Asia and the Americas, and what they are visiting is the heritage the interim report proposes to make easier to remove.
77. The Heritage Council of Victoria's synthesis and the international literature reviewed in section H agree that conservation work is more labour intensive than new construction and supports a skilled trades sector. The Australian building industry's productivity problem, which the Commission has studied, is not caused by heritage work, and the trades that heritage sustains are those the National Housing Supply and Affordability Council identifies as in shortest supply.

H. The international evidence that heritage creates value

78. The interim report relies on a single international source, a theoretical model of Auckland. The international empirical literature on heritage designation and conservation areas is large, and the Council summarises it here with the contrary findings included, because the Commission is entitled to the whole picture and the whole picture does not support Box 2.2.
79. In England, Ahlfeldt, Holman and Wendland (2012), in a study for English Heritage using 1,088,446 transactions between 1995 and 2010 across 8,167 conservation areas, found that properties within conservation areas carry a premium of about 23 per cent unconditionally and of 8.5 to 9.5 per cent after controlling for location, property and neighbourhood characteristics, that the premium roughly doubles from the boundary to the interior of an area, and that there is a spillover premium of about 5 per cent to properties within 50 metres outside the boundary (pp. 5–6). Properties in conservation areas appreciated faster than controls over the period, and areas classed as “at risk” showed a discount of about 4 per cent. Residents’ perception of the distinctiveness of their area correlated with the premium, and the authors found “no universal negative attitude toward planning regulation” among them (pp. 7–8). Ahlfeldt and Holman (2017) found a premium of about 10 per cent in distinctive conservation areas rising to 12 per cent in the most distinctive. Historic England’s polling in 2017 found that 74 per cent of adults support council powers to restrict changes in conservation areas and 5 per cent oppose them.
80. In Germany, Ahlfeldt and Maennig (2010), in the *Real Estate Economics* study of Berlin, found that designated landmarks generate positive external effects on surrounding property prices within about 600 metres. In the Netherlands, Koster and Rouwendal (2017), in the *Economic Journal* study of the Netherlands using about 2.1 million transactions, found that investment in listed buildings raises nearby house prices, that the external benefits amount to between 1.85 and 2.89 billion euros for owner occupied housing alone and between 5.94 and 6.98 billion euros including rentals, and that the benefit cost ratios of public heritage investment are between 1.14 and 1.77 on the narrower measure and between 3.64 and 4.28 on the wider (Table 4). Lazrak, Nijkamp, Rietveld and Rouwendal (2014) found in Zaanstad that listed buildings sell for about 27 per cent more and houses within a protected townscape about 26 per cent more, with each additional listed building within 50 metres adding a further 0.28 per cent. Koster, van Ommeren and Rietveld (2016), using a boundary discontinuity design, found a price difference of about 3 per cent at conservation area boundaries and a listed building premium of about 6 per cent.
81. In the United States, Been, Ellen, Gedal, Glaeser and McCabe (2016), in the *Journal of Urban Economics* study of New York City co authored by Professor Edward Glaeser, found that designation of historic districts “raises property values within historic

districts, but only outside of Manhattan”, that properties just outside district boundaries also rise in value, that the effects are more positive where the option to build unrestricted is less valuable and where districts are more aesthetically appealing, and that there is “a modest reduction in new construction in districts after designation”. Leichenko, Coulson and Listokin (2001) found designation premiums of between 4.9 and 20.1 per cent in seven of nine Texas cities, and Coulson and Leichenko (2001) found in Abilene that the internal and external benefits of designation more than outweigh its costs. Noonan (2007) found in Chicago that individually landmarked buildings carry a premium of 8.9 to 10.6 per cent and landmark districts of 3 to 5 per cent. Mason’s review for the Brookings Institution (2005) concluded that “the weight of evidence is toward positive effects” on property values while warning, fairly, that much of the literature is advocacy driven and situational (pp. 7, 21).

82. The contrary evidence should also be recorded, because the Commission is entitled to the whole of the literature rather than the favourable part of it. Heintzelman and Altieri (2013) found, using a repeat sales design in the Boston metropolitan area between 2000 and 2007, that the creation of a local historic district reduced prices within it by between 11.6 and 15.5 per cent. Noonan and Krupka (2011) found, using an instrumental variables design in Chicago, a negative own price effect of district designation alongside positive external effects. Been and her co authors found no significant gain inside Manhattan districts, where the value of the option to build is highest, and the Ahlfeldt studies found no immediate capitalisation on designation, with gains accruing over time. Glaeser (2010) has argued that New York’s historic districts have restricted supply and become enclaves of the affluent. The Council draws three conclusions from this evidence taken as a whole. First, the balance of well identified studies finds that designation is neutral or positive for values within areas and positive for values around them, which means that heritage generates the externality that justifies regulation. Second, the exceptions arise where designation is applied in the highest pressure locations with the tightest restrictions, which is an argument for calibrating controls, not for abolishing area protection. Third, even the most prominent critic of over designation writes that “it is wise and good to protect the most cherished parts of a city’s architectural heritage” (Glaeser 2010). The interim report cites none of this literature, for or against.
83. Historic England’s *Heritage Counts* series, prepared with the Centre for Economics and Business Research, estimates the heritage sector’s contribution to the English economy in 2023 at £39.9 billion of gross value added, with about 245,000 people directly employed and 546,000 jobs supported, and finds that each pound of direct value added supports a further £1.51 in the wider economy. In 2024, 187 million domestic day visits, 14.7 million domestic overnight trips and 18.2 million international trips involved heritage, and 29 per cent of all inbound visitors to Britain visited a castle or historic house. England has about 10,000 conservation areas covering about 2.2 per cent of its

land, protected since the *Civic Amenities Act 1967*. It has not been suggested in England that conservation areas should be replaced by individual listing.

84. The knowledge economy that the interim report wants to encourage locates itself, to a striking degree, in old buildings. Box 1.1 of the interim report explains that cities generate productivity through the exchange of ideas. The buildings in which that exchange takes place are disproportionately old. Historic England reports that commercial businesses in listed buildings generate about £308,000 of gross value added a year, some 4.4 per cent above the national average for commercial firms, that creative and cultural industries are concentrated in listed buildings to a markedly greater degree than in other premises, particularly in the core cities, and that 69 per cent of occupiers say a historic building projects a distinctive image to their clients. The same pattern is visible in Fitzroy, Surry Hills, Chippendale, Fortitude Valley and Fremantle, where the warehouses, factories, shops and terraces that heritage overlays protect are the premises of the small, new and creative firms on which the Commission's productivity agenda depends, and where those firms are present because the overlay prevented the replacement of their premises by floor space that only established firms could afford. Jane Jacobs' observation that "new ideas must use old buildings" has, on this evidence, become an empirical finding rather than a slogan.
85. In Europe, the *Cultural Heritage Counts for Europe* study (2015), which reviewed some 360 studies, found that heritage attracts investment, supports employment, catalyses regeneration and improves quality of life. Special Eurobarometer 466 (2017), with about 28,000 interviews across the Union, found that 84 per cent of Europeans regard cultural heritage as important to them personally, 91 per cent as important to their country, 71 per cent agree that living close to heritage improves quality of life, and 74 per cent want public authorities to allocate more resources to it. The European Commission estimates that cultural tourism accounts for about 40 per cent of all European tourism.
86. The urban districts that command the highest values, attract the most visitors and are most often cited as models of urban life are, almost without exception, historic districts under area protection, and the figures bear this out. Paris, within its 105 square kilometres, houses about 2.1 million people at 20,641 per square kilometre, the densest large city in Europe, under two protected heritage sectors, a listed building inventory in every arrondissement, a World Heritage inscription along the Seine and a height limit of 37 metres reinstated in its 2024 plan. Its density is delivered by six and seven storey nineteenth century fabric of the kind an Australian heritage overlay protects. Barcelona's Eixample houses about 267,000 people at some 35,700 per square kilometre and its Ciutat Vella about 24,600 per square kilometre. Amsterdam's canal ring, inscribed on the World Heritage List as "an urban ensemble that is still alive and active", sits in a district of 10,800 per square kilometre. The Royal Borough of Kensington and Chelsea, overwhelmingly covered by conservation areas, has 11,910 people per square kilometre, and Islington, similarly covered, was in 2011 the densest local authority in England and

Wales. Edinburgh's Old and New Towns, a World Heritage site of some 4,500 buildings of which more than three quarters are listed, remain the living centre of the city. By comparison, Greater Sydney averages about 420 people per square kilometre and Greater Melbourne about 490. If the Commission wants density of the kind those figures describe, it should note that the cities which have achieved it are the cities that kept their heritage and built within it.

87. The historic centres of Latin American cities are the clearest demonstration that heritage led regeneration is an economic strategy and not merely a cultural one. In Havana the Office of the City Historian financed the rehabilitation of Habana Vieja from the revenues of the heritage economy it created, reporting revenue of US\$119 million and profit of US\$23 million in 2011, employing about 3,000 people directly and creating some 13,000 jobs, rehousing about 3,900 low income families within the historic centre, with 95 per cent of residents viewing the changes positively. In Quito the Inter American Development Bank financed a US\$41 million rehabilitation of the historic centre from 1994 through a dedicated corporation. Cartagena's walled city received 3.4 million visitors in 2024. Mexico City's Centro Histórico has seen reported restoration of more than a thousand buildings and a rise in visits from about 700,000 to two million between 2005 and 2015. The World Bank's *The economics of uniqueness* (2012), which surveys these programs, records that heritage designation "creates market-assigned premiums", that heritage investment is labour intensive and provides proportionally more income opportunities for lower skilled workers, and that the Bank has financed some 600 heritage and tourism projects. The cautionary cases in the same region are instructive as well. In Salvador da Bahia and Valparaíso, conservation programs that restored buildings for tourism without a residential policy hollowed out the historic centres, whose populations fell by a third or more. The lesson of those cases is not that heritage protection should be weakened but that conservation and housing must be pursued together, which is what Australian overlays, which retain residential use and permit change, already do.
88. The Commission should also weigh the record of cities that took the path the interim report proposes. New York demolished Pennsylvania Station in 1963 and enacted its Landmarks Law within two years, having learned, in Ada Louise Huxtable's words, that a city "will probably be judged not by the monuments we build but by those we have destroyed". Britain's comprehensive redevelopment of the 1950s and 1960s, which cleared the Euston Arch and the Coal Exchange, produced the reaction that created the conservation area in 1967. Singapore cleared some 300 acres of its central area within a decade of 1966, found in its 1984 Tourism Task Force that it had lost what visitors came for, and from 1986 reversed course through a conservation program that has since protected some 7,000 buildings in more than 100 locations. Beijing reduced its hutongs from more than 3,000 to about a thousand and now protects the remainder. Australia has its own example in Melbourne's Docklands, redeveloped from 2000 with almost

every trace of its working harbour removed, which delivered towers and floor space, and which successive governments have since tried to give the character and sense of place that the clearance removed. In each case the destruction was justified at the time by the value of the development that would replace it, and in each case the value that was lost was later recognised to have been greater. The interim report's cost benefit test, applied in 1963, would have demolished Pennsylvania Station, because the development value of the site exceeded any sum a survey of nearby households would have produced.

89. A city's heritage is a distinguishing asset in an economy in which cities compete for people, capital and visitors, and the interim report's frame, which treats heritage only as a constraint on floor space, cannot account for it. Places that lack heritage spend heavily trying to manufacture a substitute for it, and places that have it and destroy it do not get it back. Jane Jacobs put it in a sentence that the Commission's inquiry into the economics of cities might have been expected to know, that "Cities need old buildings so badly it is probably impossible for vigorous streets and districts to grow without them."

I. Heritage areas are dense, and they are delivering housing

90. The interim report's theory is that heritage areas are where people want to live and that heritage controls prevent housing being built there. The first half of that theory is true, and it is itself evidence of the value of heritage, but the second half is contradicted by the census.
91. Using the 2021 census counts and the areas of the municipalities, the City of Yarra has about 4,600 people per square kilometre, the City of Port Phillip about 4,900, the City of Stonnington about 4,100, the City of Sydney more than 8,000, the Inner West about 5,200 and North Sydney about 6,300, against about 490 for Greater Melbourne and about 420 for Greater Sydney. The heritage rich inner municipalities are between eight and twenty times denser than their metropolitan averages in population and between thirteen and twenty nine times denser in dwellings. The densest statistical areas in the country, inner Melbourne and Potts Point, are among the most heavily heritage controlled. The terrace house, the Victorian and Edwardian shop with residence above, the interwar flat and the converted warehouse are the original missing middle, and they were built at densities that the low density zoning the Commission rightly criticises has since prohibited.
92. Between the 2011 and 2021 censuses the number of private dwellings in the City of Yarra rose from 36,818 to 49,966, an increase of 13,148 or 35.7 per cent. In the City of Sydney the number rose from 94,341 to 123,516, an increase of 29,175 or 30.9 per cent. In the City of Melbourne it rose from 53,137 to 103,040. In Stonnington it rose by 12,487 or 26.6 per cent and in Port Phillip by 10,901 or 20.9 per cent. Over the same decade Greater Melbourne's dwellings grew by 25.8 per cent and Greater Sydney's by 20.7 per cent. Three of the four most heavily heritage controlled municipalities in Melbourne, and the most heavily controlled municipality in Sydney, added dwellings faster than their

metropolitan areas. The Commission's claim that heritage controls prevent development where people want to live is falsified by the places it has in mind.

93. The Victorian Government's own analysis, which the Commission cites, found that established Melbourne added 220,000 net new dwellings between 2005 and 2016, that the share built on commercial and mixed use land rose from 30 per cent to nearly 50 per cent, and that the three inner municipalities most covered by overlays "have the fewest demolitions in total and as a percentage of constructed dwellings" (DELWP 2018, pp. 11, 18, 21). Fewer demolitions per dwelling constructed means that those municipalities added homes without destroying homes, which is a measure of the efficiency of the overlay rather than of any constraint it imposes.
94. The largest urban renewal projects in Australia's inner cities have been delivered on and around heritage sites with the heritage retained. Central Park in Chippendale delivered 1,426 apartments on the 5.8 hectare site of the Carlton and United Brewery while retaining 33 heritage items, and is described by the Government Architect of New South Wales as having the highest population density in Australia. Harold Park in Glebe delivered 1,250 dwellings around the State listed Rozelle tram depot, now the Tramsheds. Pentridge in Coburg, a place on the Victorian Heritage Register, is delivering some 2,000 dwellings within and beside its bluestone walls. Parkville Gardens is delivering about 1,600 dwellings, a fifth of them social housing, on the site of the former Royal Park hospital with its heritage buildings restored. Bowden in Adelaide is delivering more than 2,400 dwellings on a former industrial site with its heritage fabric retained. Adelaide's Adaptive Reuse City Housing Initiative has identified more than 150 underused city buildings for conversion to housing. Historic England estimates that the redundant textile mills of Yorkshire and Lancashire alone could provide 42,000 homes. On this record heritage sites are not an obstacle to supply but are, in the largest inner city projects of the last two decades, the very places where supply has been delivered.
95. The smaller sites tell the same story as the large ones. At 221 Kerr Street in Fitzroy a two storey industrial building within a local heritage overlay was converted and extended in 2022 into 51 homes, 43 apartments and 8 townhouses around a shared courtyard, built to the perimeter of the site in the manner of the surrounding fabric, and won the Australian Institute of Architects' Victorian award for multiple housing in 2023. Kensington Banks was built through the 1990s and 2000s around the retained saleyard fabric of the former Newmarket stockyards, a place on the Victorian Heritage Register. In Adelaide, Southwark Grounds is planned to deliver up to 1,700 dwellings, a fifth of them affordable, on the former West End Brewery site two kilometres from the city centre with its brew tower retained, and the Brompton Gasworks more than 800 homes around retort houses kept as a heritage quarter. Former industrial, institutional, defence, hospital and school sites of this kind are where the large gains lie, and in every one of these cases the heritage of the site was the organising idea of the development rather than an obstacle to it.

96. The interim report's heritage directions are not confined to the capital cities. Reform direction 2.1 would apply three storey as of right development to all residential land, and reform direction 2.5 to every heritage precinct, in Ballarat, Bendigo, Castlemaine and Maldon, which the National Trust declared Australia's first notable town in 1966, in Beechworth, Burra, Richmond and Ross, in Braidwood, the first whole town entered on the New South Wales State Heritage Register, in Broken Hill, the first Australian city placed on the National Heritage List, and in Fremantle, whose West End was entered in the Western Australian State Register as a single precinct in 2016. In those places heritage is not a constraint on the local economy, because the local economy is built on it. The interim report contains no consideration of regional heritage towns at all.
97. The Commission may be presented in the second round with figures of a different kind, such as the Australian Public Policy Institute's September 2026 estimate that removing conservation area controls across five Sydney municipalities "could unlock capacity for approximately 84,771 additional dwellings under existing planning controls". That figure is a highest and best use calculation of theoretical capacity on land that is fragmented into narrow historic lots and strata titles, that assumes every site is redeveloped to its zoned maximum, that by the paper's own account sets aside the minimum lot size and frontage requirements which govern dual occupancies, terraces and flat buildings, and that models nothing about the housing those areas already deliver. The consolidation of narrow, separately owned and often strata titled lots into sites large enough for mid rise buildings is the step on which the whole yield depends, and it is the step the model does not attempt. Theoretical capacity is the measure the interim report itself says governments should stop relying on (pp. 37, 51). The Council asks the Commission to apply the same discipline to capacity claims made against heritage that it applies to capacity claims made by councils.
98. The same paper attributes to conservation areas the fall in population between 2019 and 2024 in Hunters Hill, Woollahra and the Inner West. As Dr Lesh has observed (Lesh 2026b), those were the years of the pandemic, of closed borders, of departing international students and of households taking more space for fewer people, and inner municipalities across the country lost population in the pandemic years whatever their heritage coverage, the City of Melbourne most sharply of all. Over the half century since conservation areas were first introduced in the 1970s, inner Sydney has grown enormously in population and in dwellings, and paragraph 92 records the most recent decade of that growth. The paper itself acknowledges that there is no published evidence quantifying the effect of conservation areas on demographics, housing costs or market dynamics in New South Wales, which is a concession the Commission should weigh before it relies on the headline. Nor would removing the controls in some of the highest land value municipalities in the country produce affordable housing. Without affordable housing requirements, market led redevelopment in those places produces luxury apartments, and where existing flats are amalgamated into larger ones it produces fewer

dwelling than before. The announcement in September 2026 of high rise housing at Woollahra Station (ABC News, 8 September 2026), in one of the municipalities the paper singles out, shows that the opportunities for well located housing beside heritage areas are far from exhausted. The Council notes, finally, that the paper's own recommendations, a state wide public database of conservation areas, criteria that distinguish heritage significance from neighbourhood character, and regular statutory reviews, are in substance the program set out in section O, and that none of them requires the removal of protection.

J. Heritage is not the binding constraint on supply

99. The question the Commission was asked is which regulations most affect housing supply, and the bodies that have examined that question most closely do not name heritage among them.
100. The National Housing Supply and Affordability Council's *State of the housing system 2025* states that "the single biggest constraint on supply currently is that many housing projects are not commercially viable given current land, financing and development costs relative to expected sale prices", that "higher-density housing projects, in particular, face a significant feasibility gap", that "labour supply consistently falls short of what is required", that materials costs will remain high and financing costs elevated, and that "complex land use and planning approval systems further constrain supply" (pp. 9–10). Heritage appears once in that report, in a neutral list of the matters planning schemes regulate (Box 1.1, p. 22). The Council's *State of the housing system 2026* forecasts about 980,000 new homes over the Accord period against the target of 1.2 million, attributes the shortfall to construction cost growth, labour shortages in the trades and the unnecessary complexity of planning and building administration, and does not mention heritage at all.
101. The time series of completions tells the same story as the reports of the Supply Council. Australia completed 219,000 dwellings in 2016–17, 177,000 in 2024 and 173,000 in 2025. Higher density completions fell from 106,000 in the year to September 2017 to 62,000 in 2025, and higher density approvals from a peak of 123,000 to about 67,000. Apartment construction costs per square metre rose 10.2 per cent in 2024–25 alone. Over the same period the coverage of heritage overlays and conservation areas in Australian cities was essentially stable. The precincts of Fitzroy, Paddington, Carlton and Glebe were protected in 2017 when the country built 219,000 homes and they were protected in 2025 when it built 173,000. A control that did not change over those years cannot explain a fall of a fifth in total completions and of more than two fifths in higher density completions. The Commission's own research paper on housing construction productivity, published in February 2025, attributes the industry's decline to the volume

of regulation, lack of innovation, fragmentation and workforce, and does not mention heritage.

102. The interim report states as a general principle that “the most restrictive control often determines what can be built” (p. 37). In a heritage precinct the most restrictive control is almost always the underlying zone. The Grattan report the Commission relies on records that about 80 per cent of residential land within 30 kilometres of the centre of Sydney, and 87 per cent in Melbourne, is restricted to housing of three storeys or fewer, and the interim report records that 75 per cent or more of residential land in Brisbane, Sydney, Perth and Adelaide is zoned for one or two storeys (p. 42). The overlay sits beneath that ceiling, so that removing the overlay while leaving the zone in place would yield little, whereas reforming the zone, which reform directions 2.1 to 2.3 and 2.6 propose, would yield a great deal, and would do so with the overlay in place because the overlay manages the form of development rather than its quantity. Grattan’s own capacity modelling finds the largest uplift in middle ring low density suburbs, not in inner heritage precincts. The Commission has not estimated the marginal effect of removing heritage controls after its own zoning reforms are applied. Until it does, reform direction 2.5 rests on a quantity that nobody has measured.
103. The Commission holds up Auckland as its model of the “build mindset” (Box 1.3, Box 2.1). The Auckland Unitary Plan of 2016 retained the city’s special character areas, covering about 5.6 per cent of land parcels, and retained a separate historic heritage overlay. When the government’s medium density standards were applied in 2021, the council’s plan change retained about 71 per cent of the houses covered by the character overlays. Auckland’s supply response, which the interim report describes as a success, was achieved with its area based character and heritage protections in place. The Commission’s own exemplar refutes the proposition that such protections must be removed for upzoning to work.
104. The interim report’s own chapter 2 explains that zoned capacity only becomes housing where development is commercially feasible, and that feasibility depends on construction costs, land costs, finance and expected sale prices (Box 2.3). Heritage precincts are among the most expensive land in the country, and it should not be thought that heritage controls are the reason. That land would be expensive whether or not it carried a heritage overlay, because its value derives principally from location and amenity, from proximity to public transport, jobs, shops, services and nightlife, which residents value highly and pay for, and the controls add at most the modest premium documented in sections G and H to a price that the location has already set. On the Commission’s own analysis, the sites on which apartments would be feasible are those where land is cheap relative to sale prices, which are not the terrace streets of the inner city but the low density middle ring. The heritage argument is therefore not only unsupported by evidence but points the Commission away from the places where the housing will actually come from.

K. The Commission's cost benefit proposal

105. Reform direction 2.5 would require that heritage listings be “justified by cost-benefit analysis”. The Council supports the rigorous assessment of heritage significance, which is what the existing system requires. It does not support the proposal as framed, for reasons of principle and of practice.
106. The first objection of principle is that the proposal counts transfers as costs. The cost the interim report has in mind is the development value forgone on a protected site, which is the measure the Centre for Independent Studies uses and the interim report adopts. As Spiller and Lesh have shown, that value is not lost to society. Demand for housing is met on the next best site, and the social cost of protection is the difference in the utility of housing between the two sites, plus any infrastructure consequences, which on the Centre's own Gordon example is of the order of a million dollars rather than six. The remainder is a transfer between the owner of the protected site and the owner of the site that is developed instead. A cost benefit test that counts transfers as costs will fail every heritage listing in a rising market, and it will do so not because protection is inefficient but because the test is wrong. The infrastructure term deserves a word, because it is the one cost in the equation that the interim report could have measured and did not. Where displaced housing is pushed to the urban fringe, the community bears the cost of new trunk infrastructure and of longer journeys, which Spiller and Lesh put in five figures for every dwelling. Where it is accommodated on other well located sites, as it will be wherever the metropolitan strategy has planned for infill capacity, the term is close to nil. In either case it is a cost of strategic planning left undone, not a cost of heritage protection, and it is the cost that the precinct based approach of reform direction 3.1 exists to avoid.
107. The second objection concerns property rights and compensation, and it goes to the premise of the whole exercise. The Centre for Independent Studies proposes that “the local community should pay fair compensation to owners of listed properties”, and the interim report's language of “benefit forgone” proceeds from the same premise, that the development value of a site belongs to its owner and that protection takes it away. That is not the law, and it is not good economics. The right to build apartments on a suburban lot is not a natural incident of ownership but a right created by the planning scheme, conferred and withdrawn by the State as the public interest requires, and Australian planning law has never compensated owners for the effect of a planning control on the value of their land, whether the control is a zone, a height limit or a flood overlay, the narrow exception being land reserved for acquisition for a public purpose. The value the Centre would have the community pay for was never the owner's to begin with. The loss of a heritage place, by contrast, is an externality in the strict sense, a cost borne by the community that is priced into neither the developer's feasibility nor the purchaser's decision. If the entitlement were assigned as Australian law in substance assigns it, so

that the community holds the right to the survival of significant places, it would be developers who compensated the community for demolition, and on the willingness to pay evidence in sections G and H the sums would be considerable. Spiller and Lesh make the further point that the administrative, transaction and litigation costs of any compensation or bargaining scheme across hundreds of thousands of properties would exceed the efficiency gains it could produce, which is why simple regulation is the answer that economics, and not merely sentiment, gives to the problem. The Council asks the Commission to state in the final report that development potential forgone is not a cost to society and that heritage protection is not a taking.

108. The third objection is irreversibility, because demolition cannot be undone, whereas an overlay that proves too broad can be amended at the next review, and is. The asymmetry is fundamental to welfare economics, which assigns a quasi option value to retaining an asset whose loss is irreversible when future preferences are uncertain. The interim report's framework contains no such term, and it treats a decision to demolish and a decision to retain as symmetrical choices to be made on present values, which is the error that destroyed Pennsylvania Station.
109. The fourth objection concerns non use values, which the Commission's 2006 report recognised as option, bequest and existence values while acknowledging the difficulty of pricing them, and which the interim report ignores altogether. A site by site cost benefit analysis that counted only the amenity capitalised into neighbouring prices, which is the method of the Auckland model the interim report cites, would systematically exclude the value that every Australian survey shows to be the largest component, namely the value held by people who do not live nearby. The Fifer study demonstrates that households across New South Wales value the conservation of local heritage anywhere in the State. A test that ignores those households is not a cost benefit analysis at all but a development feasibility study with a heritage line item added to it.
110. The practical objection is that nobody could carry the proposal out. There are some 186,000 overlay properties in Victoria and comparable numbers in New South Wales. A discrete choice experiment of the kind that produces defensible willingness to pay estimates costs in the order of hundreds of thousands of dollars and takes a year. Site by site quantification is impossible, which means that the proposal in practice would either substitute the judgment of a council officer or a developer's consultant for the survey evidence, or would replace precinct listings with nothing. The interim report's fourth principle is to "keep the process simple" and to limit discretion (pp. 32–33). Reform direction 2.5 would add to every listing decision a contested, discretionary, litigable valuation exercise, and would add to every planning scheme thousands of individual listings in place of a precinct with a statement of significance and a set of gradings. The direction would multiply process rather than reduce it.

111. The proposal also applies to heritage a standard that the interim report applies to no other overlay. The interim report proposes that environmental protection and hazard overlays continue to justify exceptions to as of right development. It does not propose that they be replaced with site specific listings, subjected to cost benefit analysis or made easier to delist. Only heritage is singled out, and no reason for the distinction is given. The best practice principles in chapter 1 do not distinguish between the externalities that justify regulation. If heritage overlays are “broad protections applied without benefit assessments”, so are flood overlays, and the Commission does not say so of flood overlays because the proposition would be absurd, and it is no less absurd when applied to heritage.
112. The proposal also contradicts the Commission’s own reform direction 3.1, which asks governments to complete technical studies “across suburbs and localities” before development is proposed, to incorporate their outcomes “into planning schemes as clear and codified requirements for development”, and to avoid “site-specific assessments of trade-offs where possible” (p. 10). That is a precise description of a heritage precinct study and of the overlay it produces. Reform direction 2.5 asks for the opposite, the replacement of codified precinct controls with site by site cost benefit assessments. The two directions cannot both be right, and the Council submits that reform direction 3.1 is.
113. Heritage controls and neighbourhood character controls are different instruments, and the interim report distinguishes neighbourhood character overlays from heritage controls when it lists them (pp. 8, 56–57) and conflates them when it counts their costs in Box 2.2. Statutory heritage controls rest on an assessment of cultural significance against published criteria, exhibited and tested in the way described in section F. Neighbourhood character provisions rest on a judgment about the preferred future character of an area. Whatever view the Commission takes of the second, it should not be transferred to the first, and the final report should analyse the two separately and require any data on which it relies to distinguish them.
114. The Council accepts that heritage arguments are sometimes deployed tactically by people whose objection to a development lies elsewhere. That is a reason to keep heritage studies current, to publish clear gradings and to settle significance early in strategic planning, so that heritage is not the only lever left to a community that has been given no other voice in the future of its neighbourhood. It is not a reason to remove protection from places whose significance has been established. The interim report offers no evidence of how often such tactical use occurs or of what it costs, and Table 1.1 generalises an occasional abuse into a description of the system.
115. The direction would also create a perverse incentive, because a protection that must pass a test of development value forgone will fail first where development value is highest. The places most valued, most visited and most at risk would lose protection first, and the least valued would keep it. The result would be a system in which protection is inversely

proportional to significance, and the Council does not believe the Commission intends that outcome, although it is the outcome the direction produces.

116. On delisting, the direction calls for “more robust mechanisms to review and delist buildings”, and section F has shown that every jurisdiction already has such mechanisms. The interim report does not identify a case in which a mechanism was unavailable, a listing that could not be reviewed, or a criterion that should be changed. The Centre for Independent Studies proposes that a simple majority of councillors should be able to modify a listing. The Council trusts that the Commission does not propose to replace expert assessment, public exhibition and independent review with a show of hands.
117. A cost benefit analysis conducted on the evidence would favour protection. The Council does not resist the proposition that heritage protection should deliver a net benefit, and it says that on the evidence it does. The benefit side is documented in sections G and H, in willingness to pay measured in the billions, in property premiums, in spillovers to neighbours, in tourism expenditure in the tens of billions, in employment, in embodied carbon and in the values that four out of five Australians hold. The cost side, properly measured as the difference in housing utility between the protected site and the next best site, is small, and on the Commission’s own reasoning about binding constraints it is smaller still once zoning is reformed. If the Commission wishes to apply cost benefit analysis to heritage, the Council invites it to apply it to reform direction 2.5 first.

L. The environmental and climate dimension

118. The terms of reference direct the Commission to take into account the reformed *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and the Commission’s Act requires it to have regard to the need “to ensure that industry develops in a way that is ecologically sustainable” (s 8(1)(i)). The interim report’s best practice objective refers to climate change adaptation and environmental outcomes (p. 6). Yet the report treats the demolition of existing buildings as though it were costless, which it is not.
119. The Green Building Council of Australia and thinkstep-anz found in 2021 that embodied emissions accounted for 16 per cent of the emissions of Australia’s building stock in 2019 and will account for 85 per cent by 2050 as operational emissions decline. The New South Wales Department of Planning’s technical note on embodied emissions (2023) records that materials will be responsible for around half of the entire carbon footprint of new construction between now and 2050 and lists as its first strategy “retain existing building”. Historic England’s life cycle analysis in *Heritage Counts 2019* found that refurbishing and retrofitting a Victorian terrace produces about 60 per cent lower emissions to 2050 than demolition and replacement, that new construction embeds about thirteen times the carbon of refurbishment, and that ignoring embodied carbon understates the emissions of a new building by up to 31 per cent over sixty years. The

Heritage Council of Victoria's 2023 synthesis reached the same conclusion. Australia's existing building stock represents embodied carbon that has already been emitted and paid for, and a policy that makes demolition easier, in the name of a housing supply that the evidence shows will come from elsewhere, increases emissions for no housing gain.

120. The environmental case for heritage precincts extends beyond carbon, because heritage areas are the parts of the city with mature street trees, permeable gardens, walkable grids and fine grained mixed use, which are the attributes the Commission's own principles identify as the purpose of good planning. They are also the areas least dependent on private cars, which is why they support the removal of minimum parking requirements that the interim report rightly recommends.

M. International obligations and international practice

121. The Commission's Act requires it to have regard to the need "for Australia to meet its international obligations and commitments" (s 8(1)(j)). Australia is a party to the *Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972), Article 5(a) of which obliges each State Party "to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes". Article 1 of the Convention defines cultural heritage to include "groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value", which is to say ensembles. Australia supported the adoption in 2011 of the UNESCO *Recommendation on the Historic Urban Landscape*, which describes urban heritage as "a key resource in enhancing the liveability of urban areas" that "fosters economic development and social cohesion", and which defines the historic urban landscape as the urban area understood as a historic layering of values "extending beyond the notion of 'historic centre' or 'ensemble' to include the broader urban context". The interim report's proposal to confine protection to "specific buildings or small areas" runs directly against the obligation to integrate heritage into comprehensive planning and against the international consensus that significance resides in areas.
122. Australia is also the author of the Burra Charter, adopted by Australia ICOMOS in 1979 and revised most recently in 2013, which is the most widely adopted heritage doctrine in the world and the policy document named in the Victorian planning scheme. The Charter defines a place as "a geographically defined area" which "may include elements, objects, spaces and views" and which may be "an individual building or group of buildings ... an urban area or town", and defines cultural significance as "aesthetic, historic, scientific, social or spiritual value for past, present or future generations" which "is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects". The HERCON criteria applied in every jurisdiction derive from it. The

interim report does not mention the Charter, the criteria or the concept of significance on which every listing in Australia is based.

123. Area based protection is the international norm rather than an Australian peculiarity. England has had conservation areas since 1967 and has about 10,000 of them. France created secteurs sauvegardés under the Malraux law of 1962 and now has about 944 sites patrimoniaux remarquables. The United States has had historic districts since Charleston in 1931, and New York's Landmarks Law of 1965 protects more than 38,000 buildings in more than 150 historic districts. Ontario protects more than 140 Heritage Conservation Districts under Part V of its Heritage Act. Germany protects Denkmalbereiche, ensembles in which not every building need itself be a monument. Italy's planning law designates historic centres as zona A with their own rules for change. Singapore protects some 7,000 buildings in more than 100 conservation locations. Auckland retains its special character areas and its historic heritage areas. The Council is aware of no developed country that has replaced area based conservation with individual listing, and the interim report cites none. Reform direction 2.5 would make Australia an outlier among the countries whose cities it aspires to emulate.

N. Responses to the information requests

124. Information request 2.1 asks what impact reducing the coverage of heritage overlays would have on housing supply. The Council's answer, on the evidence in sections E, I and J, is that the impact would be small and uncertain, that it has not been estimated by the Commission or by anyone else with a causal method, that the binding constraint in heritage precincts is the underlying zone, that the municipalities most covered by overlays are already adding dwellings faster than their metropolitan areas, and that the net welfare effect of reducing coverage would be negative once the values documented in sections G and H are counted. The Council also answers the question the Commission did not ask, which is what impact reducing coverage would have on the things overlays protect. The answer is that demolition is irreversible, that the significance of Australia's historic suburbs lies in their ensembles, and that once a street is broken it does not come back.
125. Information request 2.3 asks for quantitative evidence on reforms to reduce the coverage of broad heritage controls and on their expected impacts on positive and negative externalities. The quantitative evidence the Council is able to offer is set out above. It includes the census growth figures for heritage rich municipalities (paragraphs 91–92), the dwelling numbers delivered on heritage sites (paragraph 94), the Buxton finding that heritage exclusions remove about five per cent of lots and that Melbourne can double its population with its heritage intact (paragraph 42), the willingness to pay estimates of the Allen Consulting Group, SGS and Fifer (paragraphs 68–70), the international hedonic literature (paragraphs 79–82), the tourism figures (paragraph 76) and the embodied

carbon findings (paragraph 119). The Council is not aware of any quantitative evidence, by a method capable of supporting a causal inference, that reducing heritage coverage in an Australian city would increase completed dwellings by a material amount. If the Commission has such evidence it should publish it with its method before the final report so that it can be tested.

126. Information request 1.2 asks whether the best practice principles are appropriate. The Council submits that the description of heritage in Table 1.1 should be withdrawn. A principle that describes a value enacted by every Australian parliament as an “excuse” is not a principle of regulatory design but a position taken in a policy argument. The Council also submits that the “build mindset” principle should be stated so that it recognises the irreversibility of some losses, the existence of non use values and the need for a consistent treatment of all overlays, environmental, hazard and heritage alike.
127. Information request 3.1 asks when discretion is useful in planning. Heritage assessment is the clearest example of discretion that has been converted into codified expectations, because statements of significance, gradings and design guidelines do exactly that, and the Council supports further codification of exemptions and standards within precincts, as set out in section O. Site by site cost benefit analysis would move in the opposite direction.
128. The Council also responds to the reform directions in chapters 3 and 4 so far as they touch heritage. Reform direction 3.1 should name heritage studies, statements of significance and gradings among the technical studies completed across suburbs before rezoning or uplift, alongside flood, bushfire and biodiversity mapping, because that is where the trade off the Commission wants settled is settled. Reform direction 3.2 should provide that pattern books and fast track pathways operate within heritage controls, and the Council supports heritage responsive pattern books for that purpose. Reform direction 3.3, which would give state significant pathways decision making powers “not bound by council planning schemes” (p. 11), should preserve referral to the statutory heritage bodies and to Traditional Owners wherever listed or precinct heritage may be affected, since a pathway that bypasses the planning scheme bypasses the overlay. Reform direction 3.4 should require that performance reporting distinguish heritage controls from neighbourhood character controls and record approvals, refusals, assessment times, demolitions and dwellings delivered in heritage areas, so that the next inquiry has evidence where this one had assertion. Reform directions 4.1 and 4.2 should recognise that infill and adaptive reuse in heritage areas use infrastructure that already exists and should be counted accordingly in infrastructure planning and funding.
129. Information request 5.1 asks about the sequencing of reforms, and the Council’s answer is that if the Commission persists with any heritage direction, it should be sequenced after the zoning reforms, so that the marginal effect of heritage controls can be measured

against a reformed baseline rather than assumed. The Council expects that measurement to show that the heritage direction is unnecessary.

O. A constructive path to conserve and build

130. The Council does not come to this inquiry only to object to what the interim report proposes, because the National Trusts want more people to live in Australia's heritage areas, both because living in them is the best way to sustain them and because the density that those areas already exhibit is the density the country needs. The following program, drawn from the Trusts' experience and from proposals advanced by Dr Lesh and others, would deliver housing in and around heritage areas faster than reform direction 2.5 and without the losses it entails.
131. The first element of the program is to codify exemptions, so that every jurisdiction adopts a standard schedule of works within heritage precincts that require no permit, such as repairs and maintenance, internal works, services, solar panels and batteries, rear additions below a defined scale and not visible from the street, and the like. Victoria's Heritage Victoria already issues about 900 permit exemptions a year for registered places. A codified schedule for overlay places would remove most of the "regulatory burden" the interim report attributes to overlays at a stroke, and it is the reform the Commission's own principles point to.
132. The second element is to decouple overlays from low density zoning, on the basis that the overlay manages significance while the zone manages density. There is no reason of heritage why a heritage precinct must sit in a single dwelling zone, and many precincts of terraces and flats never did. Governments should review the zoning beneath heritage precincts and allow additional dwellings, including subdivision, secondary dwellings, rear apartments and upper level additions, where design guidance shows they can be delivered without harm to significance. This is where the interim report's zoning reforms and the heritage system meet, and it is where the housing gain in heritage areas actually lies.
133. Not every precinct can take the same change, and the heritage study should say which can take what. A terrace, shop top or flat precinct was built at density and can take more. A garden suburb whose significance lies in its subdivision pattern, gardens and low scale, of which Haberfield and Castlecrag are the Sydney examples, can take less, and the addition there should be incremental. A graded, place based assessment of capacity for change, recorded in the heritage study and reflected in the zone, is how the two are told apart. South Australia's co located housing provisions, introduced through the Planning and Design Code in May and September 2025, show one practical form, allowing additional dwellings on a single allotment around a retained house with shared open space rather than by demolition. Frameworks of that kind add homes in character neighbourhoods without removing what makes them character neighbourhoods.

134. The third element is to direct development to non contributory sites, because every precinct contains non contributory buildings, car parks, service stations and vacant lots. Councils should identify these sites in their heritage studies and apply to them controls that positively encourage redevelopment at higher density, with design standards that respond to the precinct. Micro zoning of this kind is how Paris, Berlin and Vienna have added housing within protected districts, and it is how Central Park and Harold Park were delivered here.
135. The fourth element is to fund adaptive reuse on the model of Adelaide's Adaptive Reuse City Housing Initiative, which identifies underused buildings, offers design and construction grants, and targets a defined number of new dwellings a year. Governments should establish equivalent programs in every capital, with a priority for churches, warehouses, commercial buildings and public buildings that no longer serve their original purpose, and should adopt a national statement recognising adaptive reuse as a supply pathway.
136. The fifth element is to resource heritage studies, because the Heritage Council of Victoria found that only a third of councils had reviewed their heritage studies in the previous three years. Out of date studies are the real cause of the anomalies the Centre for Independent Studies collects. The Commonwealth, through the National Planning Reform Blueprint, should fund the systematic review and updating of local heritage studies to current guidelines, including the review of precinct boundaries and gradings, with the explicit aim of identifying where housing can be added. That is the "review" the system needs, and it is one the heritage sector would welcome.
137. The sixth element is to build a national heritage data set, because the interim report was able to say that data are not available for smaller projects. Governments should publish spatial data on heritage controls and gradings, and report annually on approvals, refusals, assessment times, demolitions and dwellings delivered within heritage areas, so that the effect of heritage controls on housing can be measured rather than assumed, and so that future inquiries are not reduced to arithmetic on a think tank's coverage statistic. Historic England's *Heritage Counts* series shows what such an evidence base looks like.
138. The seventh element is heritage pattern books, which build on the interim report's recommendation of pattern books and deemed to comply pathways (reform direction 3.2). The Council supports the preparation of heritage responsive pattern books for the principal Australian precinct types, the terrace street, the Federation villa street, the interwar bungalow street and the main street, so that additions and infill within them can be approved through fast track pathways. The Government Architects of New South Wales and Victoria and the National Trusts would be willing partners.
139. The eighth element is incentives, because transferable development rights, rate relief and conservation grants align the interests of owners with conservation and have a long history in Australia and abroad. They are the answer to the concern about owners

bearing costs that the Commission's 2006 report raised, and they do not require the removal of protection.

140. Each element of this program is consistent with the Commission's four principles. Together they would deliver more housing in heritage areas than reform direction 2.5, sooner, at lower cost, with community support rather than community resistance, and without the irreversible losses that the direction would cause. The Council commends them to the Commission and offers the National Trusts' assistance in developing them for the final report.

P. What the Council asks of the Commission

141. The Council seeks the Commission to take the following steps before the final report is delivered in March 2027.
142. First, to withdraw the heritage limb of reform direction 2.5 and the description of heritage overlays in Table 1.1, and to confine reform direction 2.1 so that it does not apply as of right development across heritage conservation areas and precincts.
143. Second, to correct or withdraw Box 2.2, and in particular to withdraw the statements that the extent of heritage overlays "likely exceeds the benefit they provide" and that supply is restricted "beyond what is socially justified", which the sources cited do not support, and to correct the citations to Fifer (2025), Buxton, Hurley and Phelan (2015), the Business Council of Australia's submission and the Victorian Department's 2018 report.
144. Third, to publish the method and data behind the 17 per cent estimate, and to obtain and publish the basis of the heritage capacity assumptions in the Grattan modelling before relying on either in the final report.
145. Fourth, to undertake or commission an assessment of the benefits of heritage protection of the kind the terms of reference require, drawing on the Commission's own 2006 report, the Allen Consulting Group, SGS, Fifer and Heritage Council of Victoria studies and the international literature, and to state in the final report what the Commission finds the benefits to be.
146. Fifth, to convene a roundtable with the Heritage Chairs and Officials of Australia and New Zealand, the state and territory heritage councils, Australia ICOMOS, the National Trusts and heritage practitioners, and to hold public hearings on the interim report under sections 9, 14 and 15 of its Act, as it did in its 2005–06 heritage inquiry.
147. Sixth, to state in the final report the extent to which AI tools were used in preparing the heritage material and to confirm that each heritage citation has been re verified by a person against its source.

148. Seventh, to adopt the conserve and build program in section O as the Commission's reform direction on heritage and housing, and to recommend Commonwealth funding for the review of local heritage studies and for adaptive reuse.
149. The Council would welcome the opportunity to meet with the Commissioners and to give evidence at a hearing. It will also make available to the inquiry team the National Trusts' registers, case studies and data on housing delivery in heritage areas in each state and territory.
150. The National Trusts have been protecting Australia's heritage for eighty years, through periods in which the case for demolition was made as confidently as it is made in the interim report. The buildings and streets that survived those periods are now the most valued in the country. The Council asks the Commission to consider, before it recommends that Australia's cities be made easier to demolish, whether the country will thank it in fifty years, and the evidence set out in this submission indicates that it will not.

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Chair

Australian Council of National Trusts

September 2026

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