



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ENVIRONMENT, CLIMATE CHANGE AND BIODIVERSITY
Dr Marisa Paterson MLA (Chair), Ms Jo Clay MLA (Deputy Chair), Mr Ed Cocks MLA

Submission Cover Sheet

Inquiry into ACT's heritage arrangements

Submission Number: 057

Date Authorised for Publication: 18 April 2023

Submission to the Inquiry into the ACT's Heritage Arrangements

Standing Committee on Environment, Climate Change and Biodiversity

ACT Legislative Assembly

Greater Canberra, 31 March 2023

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Key recommendations

Recommendation 1: The Act should be amended to make the Minister for Heritage the decision maker in the following matters:

- *Provisional registration of nominated places (section 32)* - this can be done on the Council's advice and the Minister should be required to consider the advice, as well as any other relevant considerations such as liveability, sustainability and affordability.
- *Registration of provisionally registered places (section 40)* - this should include a requirement to consider the section 38 report as well as other relevant considerations such as liveability, sustainability and affordability.
- *Cancellation of registration (section 49)* - this should include a requirement to consider the section 47 report as well as other relevant considerations such as liveability, sustainability and affordability.
- *Heritage directions (Part 11)* should be made on behalf of the Minister and subject to the Minister's refusal. Directions should be limited to sites that are already registered or provisionally registered.
- *Heritage agreements (section 99)* - the Minister should be able to enter into a heritage agreement contrary to the council's advice but must consider the advice and provide reasons for departing from it.

Recommendation 2: The restrictions placed on the redevelopment or renovation of heritage sites should be relaxed in favour of a system that tells a story and evolves as our city's needs change. To enable this, the Heritage Council should be required to provide clear guidelines on how heritage listed areas can be subject to 'adaptive reuse.' These guidelines should:

- consider the economic, environmental and affordability impacts of any restrictions on adaptive reuse;
- for guidelines for specific registered sites, be included in the Heritage Register for that site; and
- for the general guidelines, be included in the register in line with subsection 20(4) of the Act.

The Minister should also have the power to revoke heritage guidelines on their own initiative, having regards to the advice of the original recommendations made by the Heritage Council.

Recommendation 3: The ACT Government should remove Garden City Precincts, and suburb level heritage protections from the heritage framework, and restrict the Heritage Council from being able to prevent alterations or redevelopment of non-heritage listed properties regardless of their proximity to heritage registered sites.

In particular, Reid, as a CBD-adjacent suburb with excellent access to services and employment within walking distance, including its own university and planned High Speed Rail station should not continue to be preserved as it is. Instead, it should be reimagined as a Parisian medium-high density precinct that reflects the original City Beautiful aspirations of the Griffin Plan, while architectural examples of other less central Garden City Precincts like Corroboree Park are maintained.

Recommendation 4: Decisions on a heritage site's status should require a consideration of factors of liveability, sustainability, and affordability. These terms should be clearly defined, and allow for a comprehensive analysis of how the heritage registration of a site will impact the territory's ability to achieve its economic and environmental goals.

Recommendation 5: The Act should require the appointment of additional experts, such as economists, housing academics, and environmental experts to the Heritage Council, or it should require expert advice on these areas to be provided to the decision maker that must be considered prior to making a decision on whether to register a proposed heritage site.

Recommendation 6: The Act should be amended to prevent restrictions being placed on properties neighbouring heritage sites due to their proximity to heritage sites. This should include removing the ability of third party litigation against properties neighbouring heritage sites.

Recommendation 7: The ACT Government should conduct a major review of existing heritage listed places to determine whether the sites have significant heritage value, or whether they should be deregistered or if the restrictions on those sites should be amended.

Recommendation 8: The following sections of the Act should be amended:

- Amend section 21 to make internet publication of the register mandatory, reflecting current practice and community expectations
- Amend the heritage guidelines procedures in section 25 to clarify that the Council can make general guidelines for the entire territory about adaptive reuse and not just for individual objects or precincts, and to require that when making guidelines, the Council must consider factors such as environmental sustainability, liveability, affordability and economic prosperity effects on the area and the ACT as a whole.
- Amend section 43 (Cancellation proposals) so that the Heritage Council can only reject a proposed cancellation of a heritage registration where the proposal is frivolous, vexatious, misconceived, lacking in substance or not made honestly.
- Amend Part 10A (Tree damaging activity etc) so the focus of the requirement is to maintain canopy coverage overall and not to preserve specific trees. This will allow for better land use while still keeping essential canopy cover.

Background

Heritage is a planning framework

The Heritage Act and the decisions made under it are not about the past.

The Heritage Act and decisions made under it are about the future. Decisions on whether to register a place, and how to conserve registered places, only have impacts upon the future of Canberra, not the present.

In this way, the Act is practically a planning framework. It shapes the future of our city, imposing land use controls on heritage places and their surroundings. It is therefore important to consider the Act, the Heritage Council, and the ACT's heritage system as a whole within this larger holistic planning framework.

As the number of heritage registered places has accrued over the past few decades, the importance and centrality of the heritage system to our planning system has increased, and will continue to increase.

The ACT Government has committed to a 70 percent infill target for new housing. This means the vast majority of our city's new homes, businesses, services and institutions will need to be created within our existing urban footprint - including in and near heritage listed places.

The heritage framework must be reformed to facilitate the necessary change of our city and adaptive reuse of existing heritage places. This will lead to complex and difficult decisions balancing heritage against housing, prosperity, emissions reduction, environmental conservation, transport infrastructure and other factors. But these decisions need to be made, and made in a democratic and accountable manner.

Canberrans deserve and expect that the decision maker to such important decisions be democratically accountable. We recommend that the decision maker be the Minister for Heritage, working closely with the relevant directorate and the Heritage Council, and considering their advice but making a decision independently of either.

Issues with the existing Heritage Council and legal framework

The Heritage Council, and the ACT's heritage system more generally in its current form, is a solution in search of a problem. While there are many important aspects of our city's history that we should preserve and keep memory of, most of these sites have already been charted and registered. However, the Heritage Council is incentivised to continue listing sites even as their connection to our city's past becomes obscurer and more tenuous as the Heritage Council needs to justify its continued existence. This perverse incentive means that

increasingly irrelevant sites are being considered and even registered by the Heritage Council despite limited heritage benefit to the community at large.

This situation is made worse by the Heritage Council's 'trap in amber' mentality when it comes to heritage, as despite comments to the contrary, the Heritage Council has failed to define or provide any guidance on what 'adaptive reuse' of these heritage sites could include.

The ACT is now in the situation where buildings with limited heritage importance, which were constructed in the last 20 years, are subject to onerous heritage conditions, which in some cases has prevented the installation of environmentally sustainable features such as solar panels.¹

Lack of accountability

The ACT's heritage system is fundamentally undemocratic, unreflective of the community's views, and not in line with standard expectations of accountability. Currently the Heritage Council is the body that identifies, assesses, and determines whether a particular site has heritage value. They are the final body that decides whether a site gets locked in permanent stasis, regardless of any detrimental effect on the wider ACT.

As the Heritage Council is an unelected body, and the Minister for Heritage has limited say over the determinations of the Heritage Council, Canberra residents have little recourse or means to enforce accountability. This is made worse by the status of the Heritage Council as a statutory body, which greatly limits the circumstances in which a member can be removed. As such, in situations where the Heritage Council remains at odds with the community's expectations, the community has limited recourse, even through their elected government, to hold the Heritage Council accountable. We've seen examples where the Heritage Council has failed to live up to community expectations or even justify their listing previously that has required litigation to resolve.²

While any local citizen can make representations to the Heritage Council, they are ultimately the ones who choose whether to give any weight to these concerns. In order to restore trust in our heritage system, there needs to be a clear accountability mechanism via a publicly elected office holder who can be held to account for heritage decisions in our city. We are of the view that the Minister for Heritage is best placed to provide this accountability and should be the final decision maker when it comes to decisions regarding objects that are heritage listed or are under consideration for heritage registration.

¹ [Canberra man tells inquiry heritage concerns blocked him from installing more solar panels on 22-year-old house](#)

² [Church to have heritage listing removed](#)

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- *Provisional registration of nominated places (section 32)* - this can be done on the Council's advice and the Minister should be required to consider the advice, as well as any other relevant considerations such as liveability, sustainability and affordability.
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Effectiveness of the heritage system

The purpose of the heritage system

Telling a story

Heritage should not be about trapping in amber a particular moment or building and preserving it for eternity. Doing so robs future generations from truly understanding its importance and place in Canberra's story. It also greatly restricts the ability of our city to use the site for more appropriate modern uses or to face new challenges in our city. Instead, heritage should be about telling the story of our city's past and journey to the present. Unfortunately, our current heritage system is built to keep certain parts of our city trapped in a moment in time, no matter the cost of doing so, and this has major impacts on the potential to deliver housing, services, and environmentally sustainable upgrades through our existing city footprint.

In place of this approach, our heritage system should look to benefit our current city through storytelling and allowing buildings to evolve in time. An enhanced heritage system would look at ways to incorporate heritage values into new developments for heritage items and allow them to evolve with our city's needs while telling a story about how we got here.

For example, in place of imposing strong restrictions on a heritage building, such as the Commonwealth Bank site in Civic, the Heritage Council should be looking to encourage the upgrading and redevelopment of the building in a way that preserves the original metal façade and cladding which makes it unique. In such a way, the building can have new life and allow modern uses that are more economical and environmentally sustainable while also preserving the important heritage features that makes the original building important. This change allows us to tell the story about how the needs of our city change and its future, while also paying homage to the past.

We can see key examples of how this can occur around the world, with key sites such as Battersea Power Station in London being subject to adaptive reuse while still preserving its heritage listing.

Case Study: Battersea Power Station

Battersea Power Station is a decommissioned coal-fired power station, located on the south bank of the River Thames, in Nine Elms, Battersea, in the London Borough of Wandsworth.

It was built by the London Power Company to the design of Leonard Pearce, Engineer in Chief to the LPC, and CS Allott & Son Engineers. The architects were J. Theo Halliday and Giles Gilbert Scott. The station is one of the world's largest brick buildings and notable for its original, Art Deco interior fittings and decor. This unique design has resulted in its Grade II* heritage listing by Historic England.

From its decommissioning in 1975, Battersea Power Station sat empty and unused until 2014, when, despite its heritage listing, it was purchased with an intent to redevelop the site to provide for a new district and enable key urban renewal in the area. As part of this development, key elements of the power station were renovated and remade to make it suitable for modern uses. However, important parts of the site with heritage characteristics were preserved, protected and integrated into the new design.

The new district was opened in 2022, and in place of a disused and decrepit power station, there are now thousands of people living in, working in and enjoying the now thriving area. Battersea Power Station itself is home to a shopping mall as well as over 254 apartments and additional office space. This district has evolved in a way that tells a story of London's changing cityscape. A move away from large scale industry reliant on huge fossil fuel power stations, to a modern city of services and art. It does this in a way that both preserves the important parts of the past while allowing for the needs of the present and future.

Had London had similar restrictions to those often enacted by the Heritage Council in the ACT, then Battersea Power Station would remain fixed in time as a decrepit eyesore, sitting empty and unused. The redevelopment that has made it a thriving, liveable district, enjoyed by many residents would not have been possible.

Adaptive reuse

This approach also greatly increases the number of people who actually interact with and utilise the heritage of our city. Where a site is allowed to evolve in a manner that pays homage to its past but also is able to be repurposed to suit modern needs, the number of people who appreciate and have the opportunity to be part of that heritage everyday is far greater.

For example, both the suburb of Reid and the Sydney Building in Canberra's CBD are heritage listed. However, more Canberrans use, enter, enjoy and interact with the Sydney Building everyday than do the same in the entire suburb of Reid, despite its size. This occurs because parts of the Sydney Building have been able to be reused, renovated and updated

to suit our city's modern needs. Everyday, individuals are able to appreciate the architecture and historical value of the Sydney Building, while also accessing the other amenities that now exist on that site.

Conversely, despite being a much larger, beautiful, tree lined suburb, within walking distance of the CBD, Reid, as a heritage district, receives minimal attention from the broader Canberra community. Its heritage value is diminished by its limited accessibility and ability to tell its part in our story. Instead of being a site that adds to our city's history, it remains a largely exclusive oasis to the wealthy without delivering anything to the broader population. Heritage has little value if it isn't enjoyed or appreciated by the residents of our city. In that way, the Sydney Building has delivered far more in terms of heritage value than the suburb of Reid, despite being allowed to evolve and change over time.

To allow the heritage system in our city to add cultural value for our citizens, it should allow for this story telling. Doing so also provides additional environmental, economic and liveability benefits by allowing our city to deal with problems as they occur and adjust our living to suit the needs of present and future residents. To enable this to occur, site restrictions, enacted on the grounds of protecting heritage, should be less stringent and enable the redevelopment of sites in a way that suits modern needs while being sympathetic to the heritage values of the past. This should include less restrictive guidelines for each site, as well as clearer overall guidelines on adaptive reuse that seek to encourage this as an option for heritage sites.

Recommendation 2: The restrictions placed on the redevelopment or renovation of heritage sites should be relaxed in favour of a system that tells a story and evolves as our city's needs change. To enable this, the Heritage Council should be required to provide clear guidelines on how heritage listed areas can be subject to 'adaptive reuse.' These guidelines should:

- consider the economic, environmental and affordability impacts of any restrictions on adaptive reuse;
- for guidelines for specific registered sites, be included in the Heritage Register for that site; and
- for the general guidelines, be included in the register in line with subsection 20(4) of the Act.

The Minister should also have the power to revoke heritage guidelines on their own initiative, having regards to the advice of the original recommendations made by the Heritage Council.

Garden City Precincts and heritage listing whole suburbs

An area of the ACT's heritage system with a strong case for reform is the heritage listing of Garden City Precincts. The Garden City Precinct as a concept was introduced to prevent the development of additional homes within certain areas of our city and to preserve these districts as low density suburbia for the wealthy.

The early development of Canberra is an important period of our history, and future generations of Canberrans deserve preserved examples of that period. However the Garden City Precincts as currently enacted freeze a huge portion of inner Canberra, including the entire CBD adjacent suburb of Reid, into a scheme of planning controls, regardless of if the individual property itself has heritage value. These heritage registrations have costs and the Garden City Precincts are by far the most expensive in housing, climate, and economic terms.

Case Study: Solar panels on a heritage precinct home

An example of where heritage submission has failed to reflect the needs of our modern city can be seen in the case study of Mr Graham Mannall, who has also made a submission to this committee inquiry.

Mr Mannall resides in a heritage listed suburb and sought to have additional solar panels on the roof of his house in an older suburb of Canberra. His home is only 20 years old and not subject to heritage listing itself, while the suburb is.

In their response to Mr Mannall's request to install more solar panels, the Heritage Council denied his request for some of the proposed solar panels, because they would be partially visible from the street and therefore in violation of the Act.

This restriction made the proposed installation uneconomical and as a result Mr Mannall was unable to install the solar panels. In this way, the restrictions of the Act directly prevented the movement of our city towards a more sustainable future, in line with the values of its current residents.

Heritage arrangements are also applied inconsistently in these areas and often punish potential new residents or existing residents who want to do the right thing like Mr Mannall. While new solar panels are not permitted, even on non-heritage homes, because of their potential effects on the heritage values of the heritage buildings around that home, the heritage council has not applied any restrictions to other modern infrastructure which appears at odds to the heritage values of an area.

For example, there are no heritage restrictions on connections to the internet in those heritage homes, nor on the use of modern paving techniques on the road, or even on what vehicles are allowed to be parked on properties in heritage listed suburbs. Surely if solar panels detract from the heritage value of a home, then a car manufactured after the

completion of the heritage home, visible on the property, is equally as detrimental to the heritage value.

However, we rightly don't reinforce such restrictions because as a jurisdiction the ACT recognises the changing needs and technologies available to its citizens. It would be an absurd outcome to restrict access to modern infrastructure like the internet for certain residents because of the possibility it may detract from the heritage value of a nearby home, and yet we allow the equally absurd outcome of preventing a non-heritage home from installing solar panels for the same reason.

The suburb based approach also raises separate equity issues for our city. As it stands, the ACT's heritage system has locked key inner city suburbs, such as Reid, Ainslie, Kingston and Griffith among others, into low density refuges for the city's wealthy. These areas are close to services, employment hubs and other social infrastructure needed by all residents of the city but with the median house price in these areas skirting \$2 million, they will only ever be enjoyed by a few of our residents.

The heritage system as it exists prevents any kind of good medium density that our city needs to deal with its growing housing crisis. Even homes that are not individually heritage listed cannot be redeveloped into much needed housing because of this suburb based approach. This has led to the absurd outcome where single apartment blocks on the edge of Reid house as many people as the rest of the suburb combined.

The interwar period was an important one in Canberra's history. However, Canberra will be here for many centuries to come, and the 1920s should not be given higher prominence in our heritage system than the many, many periods of Canberra's history that come and will come after. The level of protection extended to the 9 separate heritage precincts cannot and should not be extended to other periods of Canberra's architectural history, and so the scale of the current Garden City Precincts is unsustainable and unjust.

Recommendation 3: The ACT Government should remove Garden City Precincts, and suburb level heritage protections from the heritage framework, and restrict the Heritage Council from being able to prevent alterations or redevelopment of non-heritage listed properties regardless of their proximity to heritage registered sites.

In particular, Reid, as a CBD-adjacent suburb with excellent access to services and employment within walking distance, including its own university and planned High Speed Rail station should not continue to be preserved as it is. Instead, it should be reimagined as a Parisian medium-high density precinct that reflects the original City Beautiful aspirations of the Griffin Plan, while architectural examples of other less central Garden City Precincts like Corroboree Park are maintained.

Broader considerations for heritage (economic, housing affordability, sustainability)

As outlined in the section *Heritage is a planning framework*, the Heritage Act and decisions made under it are about the future. Decisions on whether to register a place, and how to conserve it only have impacts upon the future of Canberra, not the present. As such, in making these decisions, the heritage system should consider the broader implications on the future than just the site's heritage value. However, currently there is no express legislative requirement to consider the impacts of onerous heritage requirements on other factors such as sustainability, liveability and affordability.

We know that an excess of heritage-listed areas can affect these factors. For example, restricting inner city land to low density houses pushes development further away from the city and increases emissions from driving. The core problem is that improving each of these factors requires a significant amount of change, and so we must be cautious about how we restrict this change. The heritage value of the site itself cannot be the only consideration, there must be some balance with other factors.

The ACT Civil and Administrative Tribunal has held that the Heritage Council is required to consider comments obtained during the process of public consultation about registration of a place or object.³ The community could voice their concerns about factors such as affordability, but this places the onus on the public to bring these things to the attention of the Heritage Council and does not require the Heritage Council to make any proactive consideration of these things. The Heritage Council is also not designed for or capable of considering these things.

To be able to make a clear decision on the benefits that a heritage listing may provide to the community, these must be weighed against the costs of restricting a site from other more productive uses. To allay this issue, the Heritage Council should either be required to consider the other factors that may be impacted by a heritage listing, such as liveability, sustainability and affordability, or the recommendations of the Heritage Council should be non-binding and considered by the Minister as part of investigation that includes these factors, prior to a decision being made.

These considerations of liveability, sustainability and affordability should consider the effect of a site's registration on both the district and consider the state of these factors in the Territory as a whole. The Act should also include clear definitions of what falls under these terms so that full consideration can be given to the loss of economic productivity as well as environmental costs associated with the registration are adequately captured.

Paired with the appropriate factors to consider, there should be very clearly defined thresholds for making decisions about heritage listings. The things that do attain a heritage status should do so for reasons that are clear to the general public, and be things that the whole community really does value.

³ *National Trust of Australia (ACT) v ACT Heritage Council & Anor (Administrative Review)* [2016] ACAT 41

Recommendation 4: Decisions on a heritage site's status should require a consideration of factors of liveability, sustainability, and affordability. These terms should be clearly defined, and allow for a comprehensive analysis of how the heritage registration of a site will impact the territory's ability to achieve its economic and environmental goals.

Comprehensive advice

Currently, under the Act, the Heritage Council is not obligated to have any economic, housing or welfare experts or to seek advice on these areas. Therefore, their ability to weigh the potential heritage benefits against other costs that might come to the ACT community from the listing of a certain site is limited. In order to gain a full picture and make a decision that considers these key factors, this expert knowledge is needed not when dealing with specific proposed sites for registration but also at the heritage planning level. This requires experts in these areas, such as economists, housing academics and environmental and climate experts to be given the ability to provide input on heritage strategies and individual listings.

To ensure that this advice is considered and that a true cost-benefit analysis can be performed on each proposed listing, as well as at the heritage planning level, there must be a requirement for the Heritage Council to contain experts on these areas through amending section 17 of the Act. Alternatively there should be a requirement in the Act for the Heritage Council or the decision maker, ideally the Minister, to consider advice from experts in these fields when making the recommendation or actually listing the property. Only with this additional input will decision-makers actually know the heritage value of the property they are proposing to list, as that value can be weighed against the economic, housing affordability, climate and other costs to the community.

Recommendation 5: The Act should require the appointment of additional experts, such as economists, housing academics, and environmental experts to the Heritage Council, or it should require expert advice on these areas to be provided to the decision maker that must be considered prior to making a decision on whether to register a proposed heritage site.

Neighbouring properties

Heritage protections in our city have often been weaponised to prevent nearby non-heritage properties from being redeveloped into much needed housing and services. Impacts on heritage listed places should be limited to changes to that place and not the surrounding environment or area. Heritage shouldn't be used to prevent nearby buildings being redeveloped into more productive uses. To prevent this from occurring, the Act should be amended to make it clear that neighbouring sites cannot be made subject to restrictions under the Act and to prevent third parties from commencing litigation against properties neighbouring heritage sites on heritage protection grounds.

This should also be reflected in the interaction with the planning system. Prospective future developments should not be limited in function (such as by a reduction in height or capacity) or in architectural expression by an amorphous requirement that it be "sympathetic" to nearby heritage places.

The influence of the heritage system should extend to the boundary of the listed place, and generally no further unless there is some direct and material impact upon the heritage place caused by adjacent development. The Act should not extend to conserving the context of a place.

Recommendation 6: The Act should be amended to prevent restrictions being placed on properties neighbouring heritage sites due to their proximity to heritage sites. This should include removing the ability of third party litigation against properties neighbouring heritage sites.

Review of existing heritage sites

We have identified several sites that are currently registered but appear to hold limited heritage value. These sites do little to enhance our city or provide a view into Canberra's history and currently sit underutilised in a time when we are facing both environmental and housing crisis.

For example, the Canturf site in Fyshwick, is registered under the Act as it was the site of a dairy farm early in Canberra's history. As a result, this large area of land, close to the city centre and the Russell defence precinct, is limited to only ever being used for agricultural purposes. However, this information is not well presented and its current use as a turf growing facility does little to either promote this history or pay homage to it. Consequently, most Canberrans know little about this site's alleged importance to Canberra's story and this area is vastly underutilised. It is hard to see how this site can justify its heritage listing or preservation, and it does nothing to contribute to the story of Canberra. This land would contribute far more if it was permitted to be redeveloped into a residential or other more useful district that explicitly celebrated and educated on its past while allowing for the homes

Canberra desperately needs, but the heritage system as currently designed does not permit this.

There are countless other sites around our city that are subject to these frivolous heritage restrictions despite offering little actual heritage value. In some cases these decisions were clearly political, such as Jon Stanhope's listing of the Jacka Farmstead, and do little to enhance the story of our city. Therefore we recommend that the ACT Government conduct a review of the current heritage listed places and the restrictions placed on them to ensure that the registration is actually contributing to the heritage values of our city and not preventing more efficient use of the areas.

Recommendation 7: The ACT Government should conduct a major review of existing heritage listed places to determine whether the sites have significant heritage value, or whether they should be deregistered or if the restrictions on those sites should be amended.

General *Heritage Act 2004* recommendations

In addition to our recommendations above, we have identified other changes to the Heritage Act that should be made in order to ensure the transparency and efficiency of our heritage system.

These changes are designed to ensure that there is a clear line of accountability for heritage decisions and that our heritage system remains aligned with the expectations of the community.

Recommendation 8: The following sections of the Act should be amended:

- Amend section 21 to make internet publication of the register mandatory, reflecting current practice and community expectations
- Amend the heritage guidelines procedures in section 25 to clarify that the Council can make general guidelines for the entire territory about adaptive reuse and not just for individual objects or precincts, and to require that when making guidelines, the Council must consider factors such as environmental sustainability, liveability, affordability and economic prosperity effects on the area and the ACT as a whole.
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