



27 November 2022

To the Expert Panel for the Implementation Review

The Association of Consulting Architects (ACA) leads the discussion on business matters in architecture in Australia. The ACA helps architectural firms navigate the changing world of practice by providing regular advice and information on business and employment matters, by promoting awareness of and discussion about business issues, and by advocating for better business practices and legislative frameworks. ACA – South Australia has a strong community of over 70 member practices and reaches more than 500 individual architects, designers, planners and graduates.

We are pleased to have the opportunity to submit on behalf of the ACA for the independent review into our planning system. As the expert panel has already prepared discussion and summary papers, our submission will address the items raised in these papers sequentially before noting additional considerations regarding the system.

Summary Paper – Character and Heritage

Elevation of Character Areas – Prong 1

- The ACA supports 'Prong 1' being the elevation of Character Areas to Historic Areas with greater demolition control.

Updating of Character Area Statements – Prong 2

- The ACA supports 'Prong 2' being the updating of character area (and historic area) statements. We note the importance of support and resourcing from Heritage SA in the process to ensure effective policy written with professional expertise.

The ACA highlights that investment in development of design codes is an important element in assisting understanding and implementation of requirements around character and historic areas. High quality design outcomes can be achieved with minimal guidance where design professionals (architects) are involved in projects. However, where projects and proponents do not have significant design expertise, robust design codes and guidelines are required to provide clear frameworks to achieve outcomes that reflect the intent in the PDI Act.

The ACA also support 'Prong 3'. The design quality of a replacement proposal for a place of character or heritage significance should be a fundamental consideration in the determination to allow demolition. Furthermore, since it is the quality of the replacement which should be the determinant in the decision, we suggest that the assessment pathway should require merit-based assessment and preferably, a local design review process.

Summary Paper – PDI Act

Notification and Appeal

The ACA supports the current functioning of the planning system with regard to notification and appeal rights. The intention to undertake thorough consultation in the development of policy and then separate assessment from community sentiment was a key positive of the reform and is still supported by the ACA. Amending the system to enable potentially emotive community response in the assessment phases would be a negative change leading to prolonged pathways and lesser development certainty.

Accredited Professionals

The accredited professional scheme is supported as a way to enhance the quality of assessment. However, this is just one of a number of elements of assessment. The policy for the scheme needs to be resolved in unison with other assessment inputs and requirements. The ACA notes that deemed to satisfy assessment against planning policy is relatively straightforward and does not raise concerns with building certifiers undertaking such assessment. We propose this could apply to assessments which are fully DTS. Where these are elements which are not DTS, then referral to a planner should be required. However, merit-based assessment should involve practitioners with specifically relevant experience. Furthermore, assessment of design quality requires another level of expertise in building design which should also be recognised. In this regard the ACA supports amendment to the act to make Local Design Review mandatory in certain circumstances.

The ACA also highlight that the DTS assessment pathway relies on strong policy to achieve successful outcomes. The planning system must ensure that adequate resourcing expertise and community engagement is committed to the development of new or amended policy. Assessment against the National Construction Code is complex, and we suggest that deemed to satisfy compliance would be rare in the work undertaken by our members, so assessment of NCC compliance by planners seems unlikely.

The ACA observes that representation of architects on CAP panels is very low. It would be highly desirable for all CAP panels to have at least one architect in their membership for coverage of matters of building design quality. Previous representation has been made around the fact that architects already operate under an Act of Parliament and have a comprehensive registration process which requires annual CPD to be undertaken, insurance to be held and payment of a registration fee. The process should provide for direct recognition as an accredited professional. Feedback from our membership highlights that payment of additional fees and undertaking of additional CPD over and above that already required to be a registered architect is a deterrent to meeting the requirements of joining a CAP.

Local Heritage

The ACA supports local heritage being transitioned out of planning policy and under the Heritage Places Act. The move should also include suitable resourcing for Heritage SA to manage local heritage and for higher quality listings to be developed for local heritage places, similar to the listing currently prepared for state heritage places.

The ACA also suggests that this process may enable an audit of currently listed places. This will ensure that all meet criteria and those that do not are de-listed.

Deemed Consents

The current process of council issuing full development approval after potentially two privately certified components is a positive check point and ACA suggests it is retained.

However, the deemed consent process is not operating with intended efficacy for several reasons:

- Verifying applications is not always undertaken in a timely manner and so approval periods are extended before the timeframes even come into effect.
- While the intention of the system was for assessment staff to have one opportunity to issue queries and receive responses, the reality allows for multiple queries which each 'stop the clock' under the guise of clarifications to the responses.
- The time clock on the portal is used as the time monitoring tool but due to starting and stopping of the clock may not represent actual days in alignment with required timeframes for approval processes
- Where professionals are involved who have ongoing relationships with Councils, they are reticent to apply for deemed consents for concern that it will negatively affect the relationship and future assessments

We propose that the following amendments to the system could address the items raised:

- Consider mechanisms for ensuring timely verification of applications. The ACA supports the second proposal that the excess time taken to verify is deducted from the assessment timeframe.
- The first proposal of ranking authorities is not relevant because the applicant has no option to choose an authority with a better ranking.
- Allow the applicant to make a determination after one (or more) query and response cycles, that the application must progress through assessment with no further queries and without prejudice.
- Automate the time clock and issue of deemed consent so that the clock cannot be manipulated and the issue of deemed consent is automatic and does not have to be pursued by the applicant.

In addition to feedback on the items raised in the discussion papers, ACA offers further commentary for consideration.

Assessment of Design Quality

Design Quality was included in the new act as a fundamental pillar of the planning system. The architectural profession has repeatedly submitted around the fact that the ability to assess design quality requires a significant level of expertise and experience in design. When matters of traffic safety, or heritage impact, or tree retention are considered, referrals are undertaken to specialists with relevant training and experience. However, when building design is assessed, it does not necessarily require any specialist expertise.

The ACA strongly recommends amendment to the Act to make Local Design Review mandatory so that expert panels are established and can provide the necessary quality in design assessment and advice.

In addition, the ACA strongly advocate that architect's existing registration programme be recognised as a direct pathway to becoming an accredited professional to assist with willingness for architects to join CAPs and design review panels.

Amendments to Design

The ACA note two matters which affect the delivery of design quality after the approval of a proposed project.

The first matter is approved amendments to the design which end up diminishing the quality of the proposal, and the second matter relates to un-approved changes to the design so that the built outcome does not reflect the approved quality.

Amendments to the design can be undertaken as amendments or even minor amendments to the approval where no referrals are required and can unwittingly result in significant detriment to quality. Multiple applications for amendments can be made and result in significant collective departure from the original intent and approval. The ACA note that the industry is aware of the process and suggests that there are proponents who 'play' this process to achieve approval based on promises of design quality and then deliberately erode the end result for greater profit. We propose that consideration be given to require amendments to significant approvals to be re-referred to relevant original referral agencies and to require approval outside of delegated authority.

The second matter relates to buildings being constructed in a way which does not match the approved design. We have not established what pathways or penalties currently exist however, feedback from our members suggested that there is minimal if any policing of compliance with original approvals and even less awareness of any penalties being pursued. Our members are however aware of many instances where constructed outcomes are of lesser quality than the approval.

The ACA proposes that inspection and assessment of compliance with planning approvals be resourced at a state level and penalties imposed for noncompliance. Modelling of a scheme may prove that revenue from penalties could pay for the resourcing, but irrespective, there should be investment in ensuring approved quality is delivered.

Tree Canopy

The ACA fully supports an ambition to enhance tree cover in our developed areas and to protect trees of value.

We make the following observations on this policy and tree protection legislation:

- We support an ambition to increase tree cover, however a percentage increase without a baseline could lead to very little increase in an area of very low tree cover. The aspiration should include a minimum cover requirement.
- Our existing tree protection legislation should be benchmarked against the other states which will identify that it is far more lenient than our peers and due for re-consideration
- Financial offset schemes for tree removal are not supported and typically highly undervalued.
- Positive incentives for tree retention or planting should be considered – land tax reduction for example, or similar to the heritage grants scheme.
- Tree planting in residential allotments should continue to be required and overstated claims of affordability impacts should be countered by accurate research and modelling.

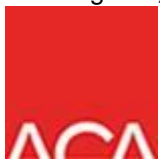
E-Portal

We have already noted timeframe matters which relate to the function of the E-Portal. In addition to these items there are some pragmatic, functional matters which have been raised by our members for consideration:

- There was previously not an ability for the applicant to instigate the upload of new or amended documents into an existing application. This appears to have been resolved, however it's not clear if the assessing planner is notified to ensure attention.
- It is problematic to add or amend staging once an application is lodged
- Rather than having to download approved documents and then set up a file transfer system to share with clients, our members have requested that a link be provided which can be sent to clients to directly access their approved documents.

Thank you for your consideration.

Kind regards,



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