



# ADVISORY NOTICE BUILDING

18/03

*Advisory Notices are issued to assist in the interpretation of the Development Act 1993*

May 2003

## ADMINISTRATION:

### What is the Building Rules Assessment Commission?

*Legislative reference: Section 36, Regulation 103*

#### **What is the Building Rules Assessment Commission?**

The Building Rules Assessment Commission (BRAC) is a group of experts appointed for the purpose of ensuring consistent decision-making on technical matters relating to compliance with the performance based Building Code of Australia (BCA). The Development Assessment Commission (DAC) established the BRAC as a sub-committee under Regulation 103(3) of the Development Regulations 1993 and is responsible for appointing members to BRAC based on criteria determined by the Minister.

#### **Who are the members of BRAC and how are they appointed?**

Members of BRAC are individuals who possess specific expertise in the construction industry and proven ability in the interpretation of the Building Rules and BCA. Members must be experienced, practising professionals with specialised skills in one or more of the following areas:

Architecture / building design	Building fire safety
Structural engineering	Access for people with disabilities
Building construction	Heritage
Domestic construction	Building surveying
Energy efficiency	Building engineering services

The number of members appointed to BRAC is not limited, but generally 15-25 practitioners are required to ensure that the broad range of skills and expertise required is covered.

Matters referred to BRAC are heard on an application by application basis. A panel of commissioners (usually no more than 5) will be formed from the wider membership base, based on the nature of the issue/s to be considered. Any panel must comprise the Presiding Member and two or more members whose nominations have been approved by the Presiding Member. Members are not permitted to sit on matters in which they have a conflict of interest.

A list of the current members of BRAC can be found at the Planning SA website,

[www.planning.sa.gov.au/building\\_policy](http://www.planning.sa.gov.au/building_policy).

### **What role does BRAC play in the building rules assessment process?**

The BRAC performs two specific roles in the building rules assessment process. These roles are detailed in section 36 of the Development Act 1993 and are,

#### **1. Referral for an opinion**

Where an applicant has chosen to meet the BCA performance requirements by means other than the deemed-to-satisfy solutions, the relevant authority can grant a provisional building rules consent (PBRC) stating that the performance requirements have been achieved by way of an 'alternative solution'. Prior to issuing the PBRC, the relevant authority may choose to refer the matter to BRAC for an opinion as to whether or not they believe that the alternative solution submitted is an acceptable way of complying with the BCA performance requirements.

#### **2. Referral for concurrence**

Where an applicant is seeking to vary the actual performance requirement in the BCA, the relevant authority must not grant a PBRC unless they have obtained the concurrence of BRAC for the granting of the PBRC.

### **How do I lodge an application, what should be included and is there a fee?**

While independent of government, the BRAC is supported in its role by the Department of Transport and Urban Planning – and more specifically, the officers from Planning SA. As such, when applying for an opinion or concurrence from BRAC, the application should be forwarded to:

**The Secretary  
Building Rules Assessment Commission  
Planning SA  
GPO Box 1815  
ADELAIDE SA 5001**

The 'application' should include the following information to ensure that the BRAC can deal with the application as quickly as possible:

- *Covering letter*

A covering letter summarising the issue/s and any supporting evidence should be attached. If the relevant authority or applicant wishes to attend the hearing to verbally provide information relevant to the application, they should advise the Secretary in writing that they wish to do so.

- *Relevant application form*

The appropriate application form should be forwarded with the application. There are four standard application forms; and two proforma application forms for the use of hardwood in bushfire prone areas.

The application forms are available from the Secretary, Building Rules Assessment Commission, telephone (08) 8303 0673 or from the Planning SA website, [www.planning.sa.gov.au/building\\_policy/statutory\\_committees](http://www.planning.sa.gov.au/building_policy/statutory_committees).

- *Supporting evidence*

The type of supporting evidence required will depend upon the nature of the application. Evidence may include technical reports, certificates of independent technical experts, trade data, product samples and/or photographs. At least 6 copies of the supporting evidence should be provided with the application.

- *Fee*

The application fee differs depending upon whether the relevant authority is seeking an opinion or concurrence from BRAC and the classification of the building being considered. The fees applicable at any given time are specified in schedule 6 of the Development Regulations 1993.

BRAC will assume that the relevant authority seeking an opinion or concurrence will provide any electronic media required to view their presentation. Planning SA may be able to provide media support if formally requested to do so and if given sufficient time to make the necessary arrangements.

### **Are there any exceptions to the requirement to pay a fee?**

Yes. No fee is payable when an application is made to use hardwood timber in lieu of fire retardant treated timber (refer Advisory Notice 21/00).

### **What happens after the lodgement of the application?**

When an application has been received, a panel of commissioners will be appointed to hear the application. Copies of the application will be distributed to the commissioners prior to the meeting for their consideration.

The relevant authority will be contacted to organise a hearing time that is convenient to themselves, the panel and Planning SA. The relevant authority will be advised, in writing, at least seven days prior to the hearing of the arrangements and confirmation of attendance is required.

**Where are the BRAC meetings conducted?**

The BRAC holds its meetings on Level 6, Dame Roma Mitchell House, 136 North Terrace, Adelaide unless otherwise informed.

**If a relevant authority or the applicant wishes to be heard at the hearing and BRAC accepts the request, what can they expect?**

The hearing is private and attendance is confined to the panel, the applicant and/or relevant authority and Planning SA. By inviting the applicant/relevant authority to attend the hearing, BRAC is providing the opportunity to clarify the issue/s raised prior to them making a recommendation.

**What is the procedure for the hearing?**

The relevant authority (where present) will speak first and will verbally outline the written submission and use the opportunity to identify key issues. The applicant (where present) has the opportunity to make a verbal submission following the relevant authority. The panel may ask the applicant or relevant authority questions to clarify points. These questions will be initiated by the panel and will be formalised through the Presiding Member. Cross-examination or random questions by the panel or applicant/relevant authority are considered inappropriate.

Additional written submissions can be tabled at the meeting however there should be a minimum of six copies provided to the panel and the secretary.

BRAC will not make its decision at the hearing and the relevant authority/applicant will be asked to leave prior to the discussion and deliberation.

Where all the information is available to the panel, the decision will normally be made on the day of the hearing. The panel may decide that additional information is required or that more time is needed to fully address the issues raised. In this case the matter can be deferred.

**Can BRAC make inspections?**

Yes. If the panel feels that it is not possible to make a decision without undertaking a site inspection, then one will be arranged with the applicant/relevant authority at a mutually convenient time.

**Does Planning SA prepare a report on the application/hearing?**

Whilst Planning SA provides administrative support to BRAC by way of minutes and correspondence, it does not prepare reports for BRAC on the merits or otherwise of an application. Planning SA will, if requested by BRAC, provide advice on legislative issues relating to the application.

**How long before a result is advised and in what form is it given?**

The applicant/relevant authority will be advised of the decision, in writing, not later than five business days after the decision of BRAC. The decision may or may not be made on the day of the hearing.

**Is there a right of appeal against a decision by BRAC?**

Where an application is to vary the performance requirements of the Building Code and BRAC does not concur with the variation, there is no right of appeal. If a relevant authority refuses a PBRC after BRAC has refused to concur with the variation there is no right of appeal against the PBRC refusal.

Where an application is for an opinion on whether or not there is compliance with the Building Code and the BRAC decision is disputed by the applicant, a further application can be made to BRAC so long as there is additional information provided and a further fee is paid. Also, the BRAC opinion is not binding on the relevant authority and they must still make their own decision regarding the issue of a PBRC.

**Is there any legal indemnity for the members of BRAC?**

As long as a member of BRAC performs the functions and duties honestly, they incur no liability for the decisions that are made. Issues of liability pass to the Crown as BRAC is an agency established by the government.

**Further information**

Department for Transport and Urban Planning

**Planning SA**

136 North Terrace  
GPO Box 1815 Adelaide SA 5001  
Telephone: 8303 0600  
[www.planning.sa.gov.au/building\\_policy/](http://www.planning.sa.gov.au/building_policy/)

**Contact:**

Don Freeman, Manager  
Bernard Steer, Senior Project Officer  
Building Policy Branch  
Planning SA  
Level 3, 136 North Terrace Adelaide 5001  
Telephone: 8303 0672

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