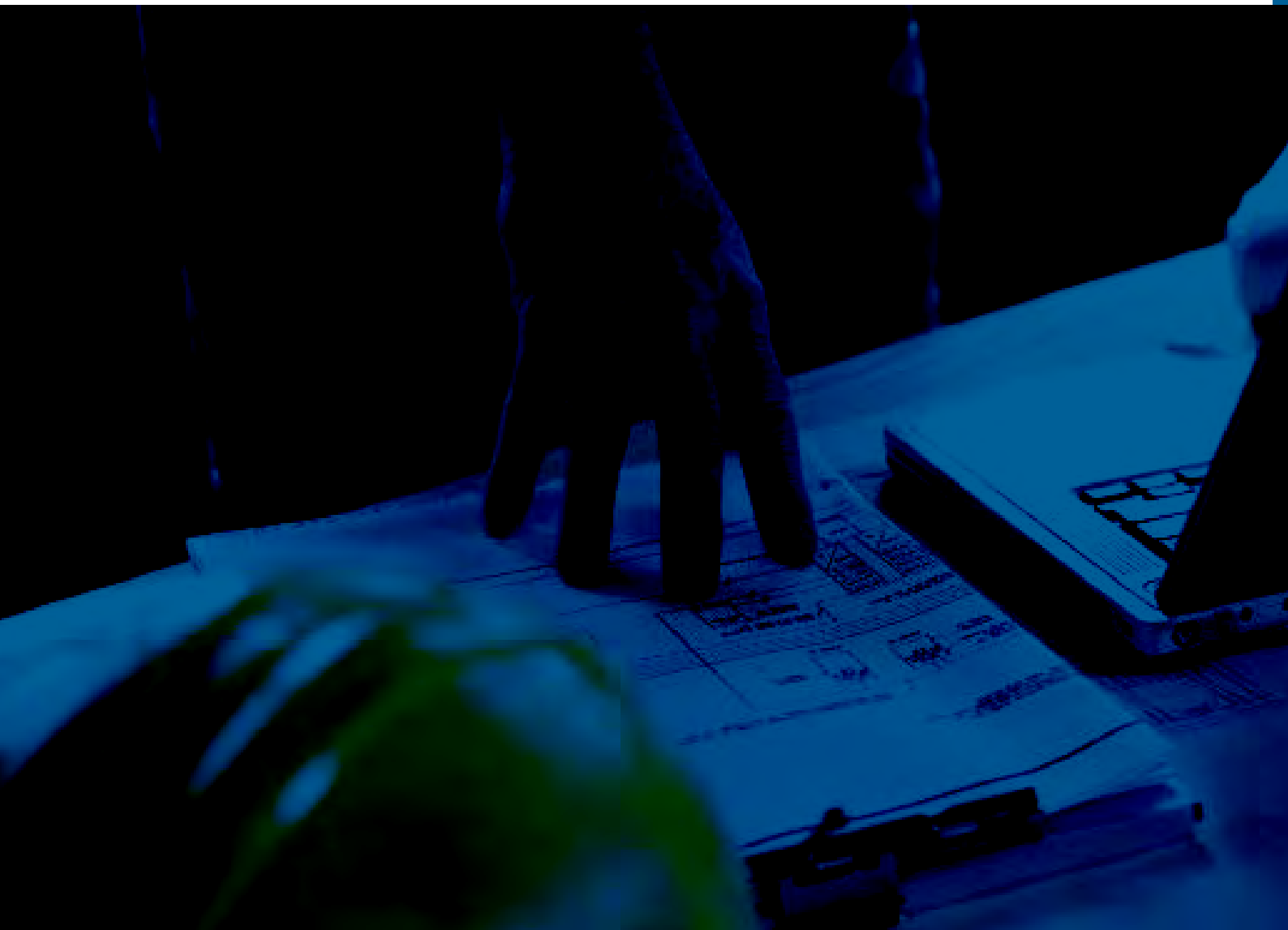


What can I do if I don't agree with a licensing decision? A guide to help you decide what to do next

JULY 2024



More information

Information, examples and answers to your questions about the topics covered here can be found on our website: www.lbp.govt.nz.

Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

Online: ISBN 978-0-478-39902-8

July 2024

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Introduction

If you don't agree with a licensing decision from the Registrar, then you can appeal to the Building Practitioners Board (the Board).

The Board is independent of the Ministry of Business, Innovation & Employment (the Ministry), the Registrar, and the Licensing Team.

An appeal is a serious and formal legal process. You should make sure that you have considered every other option available to you before you decide to make an appeal application.

The purpose of this booklet is to help you decide if it's better to resolve your licensing issues with the Ministry, reapply to be licensed, or to appeal the Registrar's decision to the Board.

It will guide you through the appeals process if you decide an appeal is right for you.

To succeed at getting licensed on appeal, you'll need to provide reasons why the Registrar's decision was wrong.

If you're not able to do this, then it's better to focus on meeting the minimum standards for licensing, so you can be licensed in the future.

You can read about the standards for licensing in the Licensed Building Practitioners' Rules (The Rules) at **www.lbp.govt.nz/about-us/regulations-rules-and-procedures/rules-of-the-board**.

This booklet is a guide only. You can read the Board's full procedures for managing appeals for licensed building practitioners under the Building Act 2004 at **www.lbp.govt.nz/become-an-lbp/declined-application**.

How to Appeal

If you decide to appeal, you must complete the 'Appeal form' and send it to the Board. You can get a copy of the form from www.lbp.govt.nz/become-an-lbp/declined-application.

Decisions for appeal

You can appeal the Registrar's decisions to:

- › decline your application to become licensed
- › offer you a licence for a lower or different area of practice than you applied for

Timeframes

If you decide to appeal, you must do so within 20 working days of the date you received the Registrar's decision letter. You must request an extension to this time frame in writing if you need more time. You will need to provide good reasons why you did not apply with the allowed time.

Will the appeal cost me anything?

Lodging an appeal is free of charge. The Board can award costs against any party to an appeal. Costs are a contribution to the reasonable (not actual) costs that a successful party to any appeal may claim against the other party. The other party is the Registrar.

Appeal Checklist:

- I have completed all sections of the Appeal form and it is signed and dated
- I have attached the Registrar's decision email (must show date/timestamp)
- I have read about the competencies and performance indicators for the licence class I applied for in the Licensed Building Practitioners Rules at www.lbp.govt.nz/about-us/regulations-rules-and-procedures/rules-of-the-board
- I have provided details of representation or support persons I intend to bring to the hearing.
- I have provided details on any special assistance or equipment I need to support presenting my case at the hearing (i.e. interpreter, sign language interpreter etc).

Evidence

The Board will make its decision based on the evidence that was before the Registrar when the Registrar made their decision. The Board will direct the Registrar to file all evidence that the Registrar holds, including transcripts of any interviews conducted.

The Board will not accept new evidence unless it is fresh evidence. Fresh evidence is evidence that could not, without reasonable diligence, have been produced when the licensing application was originally made, is credible and cogent, and there are exceptional or compelling reasons why the Board should admit the evidence.

If you want to produce fresh evidence, you will have to make an application to the Board prior to the hearing for its admission. You will need to satisfy the Board that it is genuine fresh evidence and that it should be taken into account at the Hearing.

The Hearing

The hearing will be held in person, by audio visual means or on the papers. The board will decide which option is appropriate for your hearing. If you disagree you can let the Board know.

Representation

You can bring a person to represent you and present your case. It does not have to be a lawyer.

Support people

You are welcome to bring other support people such as family, and legal or other representatives. You must supply a list of your supporters to the Board at least 5 working days before the hearing. Support persons do not have speaking rights at a hearing.

Interpreters

If you need an interpreter you should make the Board aware when you submit your appeal application. The Board will then organise an impartial interpreter. The Board do not allow people to bring their own interpreters. The cost of the interpreter is covered by the Board.

Before an Appeal Hearing

Before the appeal hearing, you'll be sent copies of the following documents:

- > your appeal form
- > any supporting documents sent with your appeal form
- > the Registrar's report and evidence
- > your original licence application
- > the reasons for the licensing decision.

The Registrar and the Board will also be sent copies of this information. **The Board won't have any other information unless you provide it.**

You will be provided with a copy of any documentation that the Registrar files in response to your appeal.

You'll be sent a Notice of Hearing with the time, date, and place of your appeal hearing.

Documentation will be shared on a screen on the day of the hearing. You will be issued with a copy of the electronic file. Hard copies of the documents are not provided.

Prehearings

The Board will call you to discuss any procedural information before the hearing. It's not an opportunity to discuss details of your appeal. If you opt not to attend this call, the Board will issue a document outlining the hearing procedure.

Hearings on the papers

The Board can direct that a matter be decided on the papers or by an audio-visual hearing. You will be advised if the Board decides that an in-person Hearing is not necessary or if an audio-visual hearing will be held.

Can the Registrar attend

The Registrar is a party to the appeal and can seek leave to appear and defend the decision that has been made. You will be informed if the Registrar decides to attend.

Non-attendance

If you don't turn up to a hearing you said you would attend, the Board will decide the outcome of your case 'ex parte'. This means that the hearing will go ahead without you. The Board will decide your outcome based on the documentation before it.

Can anyone help me prepare for my appeal?

You can employ a lawyer or advocate to help prepare and present your case. If you belong to an industry organisation it may be able to offer you advice about preparing your case.

Examples of industry representatives include: New Zealand Certified Builders (NZCB), Registered Master Builders Association (RMBA), New Zealand Institute of Building (NZIOB), Roofing Association of New Zealand, Master Brick and Block layers, Architectural Designers New Zealand Inc (ADNZ), Design Association of New Zealand Inc (DANZ), Designers Institute of New Zealand INC (DINZ)

What kind of special equipment or assistance can I ask for?

You can ask for things which help you attend your hearing or present your case, such as wheelchair access, teleconferencing equipment, a table for your drawings, etc.

About the Hearing

Where hearings are held

Hearings are usually held by an audio-visual link or in the main centre closest to where you live. For example, if you live in the Manawatu your hearing could be held in Palmerston North. If you live in the Far North, your hearing could be held in Whangarei. Appeals may also be decided on the papers.

How long will the hearing take?

The hearing will take no more than 2 hours. The Board will always ensure you have enough time to present your case.

Appeals hearings are public meetings

Appeal hearings are held in public unless the Board decides to hold it in private. You can request for your hearing to be held in private, however you will need to provide a reason for this. All appeal hearings are electronically recorded.

Who will be at the hearing

There will be between 3 and 4 members of the Board present (normally 3). The Registrar or their representative may attend in addition to you, your support people, your legal or other representative, and any other person at the Board's discretion.

What happens when you arrive at the hearing

When you arrive at the appeal hearing location, check in at reception. Please wait at reception until a Board Officer or a Board Member comes out to greet you.

The person who greets you will go over how the hearing will work and will answer any of your last-minute procedural questions. You'll have a chance to let them know if you have any additional evidence.

The Presiding Member of the hearing panel will call you when the Board is ready to begin the hearing.

How the hearing begins

The Board members will introduce themselves to you. They will also introduce you to any other persons who are present.

The Presiding Member will read out the reason for the appeal, and the decision which you are appealing against.

The Presiding Member will guide you through the hearing and let you know when to speak and who will speak next.

At the Appeal Hearing

Presenting your case

You or your legal or other representative can present your case for the appeal.

The Board will ask you questions about why you think the Registrar made the wrong decision.

The Registrar presents their case

The Registrar (if present) or their representative will present their case. The Board may ask the Registrar questions.

If the Registrar attends, you will be required to present your case before the Registrar responds.

The Presiding Member of the hearing panel will tell you when you can respond to the things the Registrar said, and make any final comments to support your case.

The Board may issue an oral decision on the day of the hearing. If not, it will issue a reserved decision following the hearing. If an oral decision is given, a written decision will still be issued.

The Appeal Outcome

The outcome of your appeal

The Board makes their decision based on what you applied for in your appeal form (e.g., 'I want to be licensed in the Design licensing class, area of practice 2'). They may consider whether you have met the competencies for a lower or different area of practice.

The Board may confirm, reverse, or modify the Registrar's licensing decision. They may also refer the decision back to the Registrar.

If your appeal is successful

The Registrar will implement the Board's decision.

What if I don't agree with the Board's decision?

If the Board confirms the Registrar's decision, you can reapply for a licence when you feel you can demonstrate that you meet the relevant competencies for your licence class.

Also, if either party doesn't agree with the Board's decision, they can appeal to the District Court. You should seek your own independent legal advice if you want to do this

Disclaimer

This booklet is intended to provide general information on the appeal processes for Licensed Building Practitioners (and those attempting to become licensed) under the Building Act 2004. While the Building Practitioners Board has taken every care in preparing this booklet, it should not be relied upon as establishing all the requirements of the Building Act 2004. Readers should always refer to the Building Act 2004 as the source document, and be aware that for specific situations or problems it may be necessary to seek independent legal advice.

The Building Practitioners Board accepts no liability for the use of the information in this booklet, nor does it accept liability for errors or omissions or any claim for loss or damage as a result of reliance on the information contained in the booklet.



Te Kāwanatanga o Aotearoa
New Zealand Government

BPB 10686