



# Appeals Procedures

**Procedures for the Management of Appeals relating  
to Licensed Building Practitioners under the  
Building Act 2004**



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## Interpretation

<b>Act</b>	means the Building Act 2004 and any subsequent amendment to that Act;
<b>Appeal</b>	means an Appeal by a Licensed Building Practitioner to the Board under section 330(1) of the Act;
<b>Appellant</b>	means the a person who has Appealed to the Board under section 330(1) of the Act against a decision of the Registrar;
<b>Board</b>	means the Building Practitioners Board established by section 341 of the Act or a subcommittee appointed pursuant section 343(2) of the Act;
<b>Board Officer</b>	means the person or persons delegated by the Registrar to carry out Board officer duties for the Board;
<b>Chief Executive</b>	means the Chief Executive of the Ministry or a person under a delegation from the Chief Executive;
<b>Ministry</b>	means the Ministry of Business, Innovation and Employment;
<b>Late Application</b>	means an appeal which is lodged outside of the required 20 working days stipulated in section 331(a) of the Act or an appeal application where additional information is required and it is not provided within the specified timeframe;
<b>Licensed Building Practitioner</b>	means a building person whose name is, for the time being, entered in the register established and maintained under section 298 of the Act;
<b>Meeting</b>	means a meeting of a quorum of the Board for the purpose of undertaking Board business or a subcommittee of the Board appointed under clause 34 of Schedule 3 of the Act;
<b>Member</b>	means a member of the Board;
<b>Minister</b>	means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Act (currently the Minister for Building and Construction);
<b>Presiding Member</b>	means the Chairperson of the Board, or the Deputy Chairperson if the Chairperson is not present, or the member chosen by the members present if the Deputy Chairperson is not present or the member appointed as the Chairperson of a subcommittee under clause 34(3) of Schedule 3 of the Act;
<b>Register</b>	means the Register of Licensed Building Practitioners established and maintained under section 298 of the Act;
<b>Registrar</b>	means the Registrar of Licensed Building Practitioners appointed by the Chief Executive under section 310 of the Act;
<b>Rules</b>	means rules relating to Licensed Building Practitioners made under section 361 of the Act meeting the requirements of section 353 of the Act;
<b>Working Day</b>	means any day except: <ul style="list-style-type: none"><li>(a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day; and</li><li>(b) the day observed as the anniversary of the province of which the area forms a part; and</li><li>(c) a day in the period beginning on 20 December in any year and ending with the close of 10 January in the following year.</li></ul>

## 1. General

### 1.1 Scope of Procedures

- 1.1.1 These procedures apply to all Appeals, Appellants, Members and to all persons assisting with or attending or appearing at Appeals.
- 1.1.2 In the performance and exercise of their decision-making functions and powers, the Board must comply with the principles of natural justice.
- 1.1.3 The principles of natural justice require that proceedings are conducted in a manner that ensures that parties are given a fair opportunity to be heard and to contradict evidence against them, and that the decision-making process is conducted fairly, transparently and in good faith.
- 1.1.4 Clause 27 of Schedule 3 of the Act provides that the Board may regulate its own procedures. Accordingly it may at any time vary or depart from these procedures if it considers to do so would be in the best interests of natural justice or to do so would achieve the purposes of the Act.
- 1.1.5 In the event of any conflict between the provisions in these procedures and the Act or the Rules, the Act and then the Rules will apply.

### 1.2 The Legislative Framework

#### The Building Act

- 1.2.1 The legislation and regulations referred to in these procedures can be accessed at [www.legislation.govt.nz](http://www.legislation.govt.nz). The Licensed Building Practitioners Rules 2007 are available at [www.lbp.govt.nz/lbp/the-board/the-building-practitioners-board/the-lbp-rules](http://www.lbp.govt.nz/lbp/the-board/the-building-practitioners-board/the-lbp-rules).
- 1.2.2 The overarching purpose of the Act is to ensure that buildings are safe and well built. The Act aims to achieve its purpose by providing for the regulation of building work, the establishment of a licensing regime for Licensed Building Practitioners and the setting of performance standards for buildings.
- 1.2.3 Part 2 (subpart 4) and Part 4 of the Act deal with the regulation of Licensed Building Practitioners.

#### Licensed Building Practitioner Regulations

- 1.2.4 The Building (Licensed Practitioners Fees and Levies) Regulations 2010 prescribe the fees, levies and charges that will be collected from Licensed Building Practitioners to cover the costs of operating and administering the Board and the costs of administering the licensing function of the Registrar of Licensed Building Practitioners.
- 1.2.5 The Building (Designation of Building Work Licence Classes) Order 2010 designates the seven licensing classes in place for Licensed Building Practitioners under the Act and specifies the type of building work that people licensed in those classes may carry out or supervise. The Order also specifies the people who, under section 291(2) of the Act, are to be treated as if they are licensed in a specified class because they are already registered or licensed under other relevant enactments – currently registered architects, chartered professional engineers and licensed plumbers.

### Rules

- 1.2.6 The Act requires there to be Rules relating to Licensed Building Practitioners. Rules are to be prepared by the Chief Executive of the Ministry, approved by the Board, and made by the Minister for Building and Housing. The Rules are deemed regulations.
- 1.2.7 The Licensed Building Practitioners Rules 2007 came into force on 1 November 2007. The Rules set out the standards of competence that Licensed Building Practitioners must meet to become licensed and to continue to be licensed, and detail the information and evidence requirements associated with licensing. The Rules also detail procedures for making licensing decisions and managing the suspension and cancellation of licensing.

### 1.3 Roles and Functions

#### The Registrar

- 1.3.1 The Ministry is responsible for administering the Licensed Building Practitioner Scheme. The Registrar of Licensed Building Practitioners is appointed by the Chief Executive of the Ministry and the functions include:
- (a) establishing and maintaining a register of Licensed Building Practitioners;
  - (b) deciding on applications for licensing and continued licensing;
  - (c) licensing people, and cancelling and suspending licensing
  - (d) assisting the Building Practitioners Board to receive and investigate complaints about licensed building practitioners; and
  - (e) providing administrative support to the Building Practitioners Board.

#### The Board

- 1.3.2 The Board is a statutory board with members appointed by the Governor-General on the recommendation of the Minister.
- 1.3.3 The Board is independent of the Ministry but has no statutory power of delegation. The Board's functions include hearing Appeals against decisions of the Registrar not to license a person or to suspend or cancel a Licensed Building Practitioner's licence.

#### The Minister

- 1.3.4 The Minister approves the Rules submitted by the Board. Once the Minister approves the Rules they are made and have the status of deemed regulations.

#### Licensed Building Practitioners

- 1.3.5 Licensed Building Practitioners may apply to the Registrar to be licensed under the Act. Practitioners who meet the minimum standard for licensing set out in the Rules may be entitled to be licensed. Licensed Building Practitioners have duties and obligations under the Act and Rules, including but not limited to:
- (a) demonstrating as frequently as required by the Rules that they continue to meet the applicable minimum standards of competence;
  - (b) completing skills maintenance programmes set by the Registrar;
  - (c) responding to annual contact from the Registrar;

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- (d) ensuring that the information about them on the register of Licensed Building Practitioners is up to date;
- (e) ensuring that they do not carry out or supervise restricted building work outside the scope of their licensing classes;
- (f) providing memoranda describing restricted building work carried out or supervised;
- (g) ensuring that work is not carried out or supervised in a negligent or incompetent manner;
- (h) complying with relevant building consents; and
- (i) not holding themselves out to be licensed for work that is outside the scope of their licensing class(es).

1.3.6 Under section 314B of the Act a Licensed Building Practitioner must not misrepresent his or her competence and must carry out or supervise building work only within his or her competence.

## 2. Appeals to the Board

### 2.1 Introduction

2.1.1 A person may Appeal to the Board under section 330 against a decision of the Registrar to:

- (a) decline to license a person as a Licensed Building Practitioner; or
- (b) suspend or cancel a Licensed Building Practitioner's licence.

2.1.2 The Act provides that:

- (a) Appeals must be lodged within 20 working days after notice of the Registrar's decision is communicated to the applicant, or within any further time period that the Board allows (s 331);
- (b) Appeals must be brought to the Board by notice in writing (s 332);
- (c) A decision or action against which an appeal is lodged continues in force unless the Board orders otherwise (s 334);
- (d) Appeals must be heard by way of rehearing (s 335);
- (e) on hearing an Appeal the Board may confirm, reverse or modify the decision Appealed against, and may make any decision or take any action that the Registrar could have made (s 335);
- (f) the Board must not review any decision or action or part of any decision or action not Appealed against (s 335);
- (g) instead of determining an Appeal the Board may direct the Registrar to reconsider part or the whole of its decision (s 337);
- (h) the Board may suspend the Registrar's decision pending the determination of an Appeal (s 334);
- (i) the Board must issue its decision, and the reasons for its decision, in writing (s 283);
- (j) the Board may prohibit the publication of names or particulars (s 339);
- (k) the Board's decision on an Appeal may be Appealed to the District Court (s 330); and

- (l) the decision of the District Court on an Appeal may be Appealed to the High Court on a point of law (s 340).

## 2.2 Notice of Appeal Right

- 2.2.1 The Act requires the Registrar to give written notice of his or her decisions, with reasons, in writing. The Registrar's decision letters include notice of a person's right of Appeal, the timeframe within which the Appeal must be lodged and details of how an Appeal must be lodged.

## 2.3 Lodgement of an Appeal

### Application Requirements

- 2.3.1 An application for Appeal must be made on the *Application for Appeal* form available from the Board Officer or the Ministry. The application must contain the following information:
  - (a) the Appellant's name;
  - (b) the Appellant's address for correspondence;
  - (c) the decision or part of the decision Appealed against (attaching a copy of the decision);
  - (d) the date the Appellant received the decision;
  - (e) the grounds of Appeal (full circumstances on which the Appeal is based and the reasons); and
  - (f) the relief sought.
- 2.3.2 An application for Appeal must be lodged with the Board within 20 working days after notice of the decision is communicated to the Appellant, or within any further time period that the Board allows.

### Incomplete applications

- 2.3.3 If an application for Appeal is incomplete, the Board Officer will, where possible, contact the Appellant to advise him or her to provide the missing information. If the information is not provided within the 20 working day timeframe for lodging an Appeal, the application will be treated as a Late Application.
- 2.3.4 Applications for Appeal are deemed received by the Board on the day that they:
  - (a) are delivered in person to the Board Officer;
  - (b) are sent by fax or e-mail to the Board Officer; and
  - (c) would have been delivered to the Board Officer in the course of ordinary post.

### Administration

- 2.3.5 On receiving an application for Appeal the Board Officer will:
  - (a) stamp the application with the date of receipt; and
  - (b) open a file by allocating an identifying file number to the application.
- 2.3.6 Following receipt of an application the Board will review the application to confirm whether it comes within the grounds for an appeal under section 330 of the Act. If the Board determines that the application does not come within the grounds of appeal then the applicant will be notified and the file will be closed.

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- 2.3.7 Subject to paragraph 2.5 of these Procedures, the Board Officer will acknowledge in writing that an application for Appeal has been received. An acknowledgement letter may:
- (a) note that further correspondence which includes details about a hearing and hearing dates will follow;
  - (b) convey directions from the Board;
  - (c) confirm who will be attending, who will be presiding, and who may be heard at the hearing; and/or
  - (d) explain to the Appellant any other requirements of these procedures.
- 2.3.8 Immediately after acknowledging a valid application for Appeal that is “in time” (or after a Late Application has been allowed by the Presiding Member) the Board Officer will provide the Registrar with a copy of the application. All future correspondence between the Appellant and the Board will be copied to the Registrar.

## 2.4 Registrar’s Report

- 2.4.1 The Registrar must provide the Appellant and the Board Officer with a report, including a copy of all documents relevant to the Appeal (e.g. a copy of the Appealed decision, the evidence used to reach the decision, the reasons for the decision and any subsequent correspondence between the Registrar and the Appellant in relation to the decision) as soon as practicable, but within 10 working days after being provided with an application for Appeal by the Board Officer.

## 2.5 Late Applications

- 2.5.1 A Late Application will only be accepted if an extension of the timeframe is agreed by the Presiding Member.
- 2.5.2 An Appellant who lodges a Late Application for Appeal without a written request for an extension of time will be advised, in writing, by the Board Officer to make a request for an extension of time.
- 2.5.3 A request for an extension of time should set out in writing:
- (a) the reasons for the delay in making the application for Appeal; and
  - (b) the steps taken by the Appellant to lodge the application on time.
- 2.5.4 On receiving a written request for an extension of time, either as part of an application for Appeal or separately, the Board Officer will acknowledge in writing to the Appellant that his or her request for an extension of time has been received and that a decision on the request will be made as soon as practicable.
- 2.5.5 The Presiding Member will consider requests for an extension of time as a priority.
- 2.5.6 Requests for an extension of time will be decided “on the papers” unless the Presiding Member determines otherwise.
- 2.5.7 The Presiding Member will deliver its decision on a request for an extension of time in writing to the Appellant as soon as practicable after determining the matter. The Presiding Member may:
- (a) dismiss the request for an extension of time and dismiss the application for Appeal; or
  - (b) allow the request for an extension of time and allow the application for Appeal to proceed.



## **2.6 Stay or Suspension of Original Decision**

- 2.6.1 Under s 334 of the Act, a decision or action against which an Appeal to the Board is lodged continues in force until the Appeal is determined unless the Board orders otherwise. In these procedures an order of the Board to suspend operation or force of the decision or action pending the determination of the Board is referred to as a “Stay of Decision”.
- 2.6.2 A request for a Stay of Decision must be made in writing by the Appellant and may be made at any time up to and including the day of the hearing. A request for a Stay of Decision must set out reasons for the request.
- 2.6.3 The Board may of its own motion order a Stay of Decision.
- 2.6.4 On receiving a request for a Stay of Decision the Board Officer will acknowledge in writing to the Appellant that his or her request has been received and that a decision on the request will be made as soon as practicable.
- 2.6.5 Immediately after acknowledging a request for a Stay of Decision the Board Officer will provide the Registrar with a copy of the request.
- 2.6.6 The Registrar must within 10 working days after being provided with a copy of a request for a Stay of Decision by the Board Officer, provide the Board with a written report setting out the reasons for the decision the request for a stay relates to.
- 2.6.7 Immediately after receiving a written report from the Registrar concerning a request for a Stay of Decision, the Board Officer will submit the Registrar’s report and the Appellant’s request for a Stay of Decision to the Board for consideration.
- 2.6.8 The Board will consider requests for a Stay of Decision as a priority.
- 2.6.9 Requests for a Stay of Decision will be decided on the papers unless the Board decides otherwise.
- 2.6.10 The Board will deliver its decision on the request for a Stay of Decision, with reasons for the decision, in writing to the Appellant and the Registrar as soon as practicable after determining the matter. The Board may:
- (a) dismiss the application for a stay;
  - (b) order a stay of the decision until the Appeal is determined; or
  - (c) stay the decision with limited effect, for example, allowing the Appellant to continue to be licensed under Board-established guidelines, until the Appeal is determined.

## **2.7 Withdrawal of Application for Appeal**

- 2.7.1 An Appellant may withdraw his or her application for Appeal in writing to the Board Officer at any time before the conclusion of an Appeal hearing, or by advising the Board orally of his or her intention to withdraw at his or her hearing.
- 2.7.2 On receipt of notice of the withdrawal an Appeal the Board Officer will immediately notify the Registrar and the Board in writing that the Appeal has been withdrawn and close the Appeal file.

## 2.8 Pre-hearing Conference

- 2.8.1 The Board may convene a pre-hearing conference. A pre-hearing conference will not be held before an Application for Appeal has been acknowledged. If a pre-hearing conference is to be convened, the Board Officer will fix a time for the pre-hearing, and notify the Presiding Member and the Appellant.
- 2.8.2 The Board Officer may refer the Appeal to the Board for consideration prior to setting a pre-hearing.
- 2.8.3 The aim of a pre-hearing conference is to ensure that proper preparations are made for the fair, orderly and efficient hearing of the Appellant's Appeal.
- 2.8.4 The Board will ensure that a substantive hearing is not unreasonably delayed by the scheduling of a pre-hearing conference.
- 2.8.5 Pre-hearing conferences will be conducted by the Presiding Member for the Appeal. A quorum of Board members is not required for a pre-hearing conference.
- 2.8.6 A pre-hearing conference will generally be conducted by teleconference but may, at the Board's discretion, be conducted in person.
- 2.8.7 At a pre-hearing conference the Presiding Member may:
- (a) clarify and/or refine the competencies to be considered at the Appeal;
  - (b) agree procedural elements relating to the hearing including the timeframes for submitted evidence and submissions;
  - (c) discuss any witnesses to be called or any documentation to be produced; and
  - (d) agree that a hearing is to be held in person or on the papers.
- 2.8.8 As soon as practicable after a pre-hearing conference the Board will notify the Registrar and the Appellant, in writing, of the matters agreed at the conference and the actions (if any) to be taken by either of them as a result of the matters agreed.

## 2.9 Hearings

- 2.9.1 A Hearing is a meeting of the Board for the purposes of the Act, whether or not the Registrar or the Appellant attends. The relevant provisions in Schedule 3 of the Act apply to Hearings of the Board.

### Setting a Hearing

- 2.9.2 The Board Officer will fix a time and place for a hearing, and notify the Board, the Registrar and the Appellant.
- 2.9.3 The Board Officer may refer the Appeal to the Board for consideration prior to setting a hearing.
- 2.9.4 The Registrar and the Appellant must be given at least 15 working days' notice prior to the date of the hearing.

### Hearing Notice

- 2.9.5 The Board's *Notice of Hearing* will:
- (a) state the decision that is the subject of the Appeal;
  - (b) confirm the time and place of the hearing;
  - (c) provide information about how the hearing will be conducted;

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- (d) confirm who will be attending, who will be the Presiding Member, and who may be heard at the hearing (unless this has previously been specified to an Appellant, in writing);
- (e) explain to the Appellant the requirements to (unless this has previously been specified to an Appellant, in writing):
  - (i) provide a list of witnesses to the Board, if the Appellant wishes to call any;
  - (ii) provide written submissions if requested to do so by the Board; and
  - (iii) submit any information or evidence that has not previously been provided to the Board and the Registrar as soon as practicable before a hearing.

### Hearing Location

- 2.9.6 The Location of the hearing will be at the Board's discretion.
- 2.9.7 The Board may, where it considers it is expedient to do so, require that a hearing be held by way of teleconference or video conference.
- 2.9.8 An Appellant may request that his or her hearing is held in a main centre that is more convenient or appropriate for the Respondent and/or any witnesses he or she proposes to call. Such request must be in writing and be made no less than 10 working days' prior to the hearing and include the reasons for the request. The Presiding Member for the hearing will decide whether or not to grant the application and the Respondent will be advised accordingly.

### Hearing Administration

- 2.9.9 As soon as practicable before a hearing the Board Officer will ensure that:
  - (a) the Appeal file containing the documents relevant to the hearing has been distributed to the Board members attending the hearing in sufficient time for members to read them and prepare for the hearing;
  - (b) the attendance (or otherwise) of the Registrar and the Appellant and/or their representatives has been confirmed and the Board notified; and
  - (c) the list of witnesses that the Appellant wishes to call (if any) has been distributed to the Board members attending the hearing.

### Quorum and Presiding Member

- 2.9.10 A quorum for a hearing of an Appeal is, in any case, no fewer than three Members
- 2.9.11 At an Appeal hearing the Chairperson presides. If the Chairperson is not present the Deputy Chairperson presides. If neither is present, a member chosen by the members present presides.

### Hearing on the Papers

- 2.9.12 The Board may decide an Appeal on the papers where the Board considers, taking into account the requirement to adhere to the principles of natural justice that a hearing on the papers is an appropriate manner in which to conduct a hearing.
- 2.9.13 If the Board decides to hear the matter on the papers then the Appellant may still attend by phone or video conference or in person at his or her own cost. The Board's Practice Direction – Rules for the use of Audio and Visual Links are to be

followed when a person appears by phone or video conference. They are contained in Appendix One.

### Conflicts

- 2.9.14 Before the commencement of a hearing the Presiding Member will (in private) poll all attending members to determine whether any has a conflict of interest in relation to the Appeal. Any Member who has a conflict of interest must stand aside and may not participate in the hearing.
- 2.9.15 Where a Member has an association with a person who has lodged an Appeal that Member shall declare the association to the Board as soon as he or she becomes aware of it, after which the Board must decide whether the association reflects adversely (or may be seen to reflect adversely) on the independence of the Member and whether the member should withdraw himself or herself from deciding the Appeal.

### Who may be Heard at a Hearing

- 2.9.16 Subject to the Board's discretion to hold a hearing on the papers, the following persons are entitled to be heard at a hearing:
- (a) the Registrar (or his or her representative) with the leave of the Board;
  - (b) the Appellant;
  - (c) a representative of the Appellant, including a legal representative;
  - (d) a witness for the Appellant; and
  - (e) any other person with the permission of the Board.

### Witnesses

- 2.9.17 Subject to any directions issued to an Appellant, an Appellant intending to call witnesses must submit a list of witnesses to the Board at least 10 working days before the commencement of the Appeal and may be required to provide briefs of evidence.
- 2.9.18 A witness may be required by the presiding member to:
- (a) give evidence under oath or affirmation; and
  - (b) produce documents, things, or information, in their possession or control that are relevant to the hearing.
- 2.9.19 A witness may, with the express consent of the Board give evidence by phone or video conference or in person at his or her own cost. The Board's Practice Direction – Rules for the use of Audio and Visual Links are to be followed when a person gives evidence by phone or video conference. They are contained in Appendix One.

### Order of Proceedings

- 2.9.20 Hearings in person will generally adopt the following procedure:
- (a) the presiding member commences the hearing by:
    - (i) commencing an electronic recording of the hearing;
    - (ii) stating his or her name and occupation;
    - (iii) inviting the other attending Board members, the Registrar and the Appellant to introduce themselves by stating their name and occupation;

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- (iv) reading into the record a statement about the purpose of the hearing, including details of the decision(s) being Appealed against; and
  - (v) providing a summary of the procedure that will be adopted for the hearing;
  - (b) the Appellant and any other persons who will give evidence are sworn in by taking an oath on the Bible, by making an affirmation, or by making a declaration in another form that the Appellant declares to be binding on him or her;
  - (c) the Appellant presents any argument and/or evidence in support of his or her Appeal, including examining (sworn) witnesses he or she has called for the hearing;
  - (d) Members of the Board may ask questions of the Appellant or witnesses (if any) at any stage of the hearing;
  - (e) the Presiding Member may invite the Appellant to make oral or written submissions regarding prohibition of the publication of the name or particulars of the affairs of the Appellant or any other person; and
  - (f) the Presiding Member closes the hearing and advises the parties that a decision, with reasons, will be delivered in writing to the parties as soon as practicable.
- 2.9.21 The Presiding Member may, at his or her discretion, deliver an oral decision at the time of the hearing provided that a written decision is delivered as soon as practicable thereafter.

### Hearings to be Public

- 2.9.22 Hearings are to be held in public except where the Board is of the opinion that it is proper to hold a hearing or part of a hearing in private, having regard to the interests of any person (including, without limitation, the person's privacy interests) and the public interest.
- 2.9.23 The Appellant may request that the hearing or part of the hearing be held in private. A request for a hearing to be held in private will be heard in private and considered by the Board in private.

### Adjournments

- 2.9.24 Hearings will not be adjourned without good reason. The Presiding Member may adjourn a hearing at the request of the Registrar or the Appellant or because it is of the opinion that it is proper to do so in the circumstances.
- 2.9.25 A hearing will not normally be adjourned due to the unavailability of a legal representative unless the unavailability occurs at unavoidable short notice so that another representative would not have had sufficient time to fairly represent the party concerned.
- 2.9.26 If a hearing is adjourned the Officer will, within 10 working days, fix a time and place for the resumption of the hearing, and notify the Board, Registrar and the Appellant.

### Considering evidence

- 2.9.27 Appeals are to be heard by way of a "rehearing".
- 2.9.28 The Appellant has the burden of proof on the Appeal. The required standard of proof is the balance of probabilities.

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2.9.29 The Board's consideration of the decision Appealed against must be limited to the matters in the Registrar's decision that have specifically been Appealed against.

### 2.10 Decision and Implementation of Decision

2.10.1 The Board will deliberate in private before reaching a decision on an Appeal. No persons other than Board members and the Board Officer may be present.

2.10.2 A decision of the Board must be made by resolution voted by the majority of members.

2.10.3 The Board may make the following decisions:

- (a) confirm the Registrar's decision;
- (b) reverse the Registrar's decision, wholly or in part;
- (c) modify the Registrar's decision in order to correct a defect (without necessarily changing the outcome); or
- (d) make any other decision that the Registrar could have made.

2.10.4 Instead of determining an Appeal, the Board may direct the Registrar to reconsider a decision or part of a decision. The Board must give the Registrar reasons for the direction to reconsider and may give any other directions it thinks are just about the part or parts of the decision that require reconsideration.

2.10.5 The Board will deliver its decision to the Registrar and the Appellant as soon as practicable after coming to a decision on an Appeal. The decision must:

- (a) be in writing;
- (b) state the reasons for the decision;
- (c) contain any directions necessary for the Registrar to implement the Board's decision or to comply with the Board's direction to reconsider the Registrar's original decision;
- (d) be signed by the Presiding Member of the Board;
- (e) record the minority view if the Member requires ;
- (f) set out the right of Appeal to the District Court under section 330(2) of the Act; and
- (g) state whether the publication of the name or particulars of the affairs of the Appellant or any other person is prohibited.

2.10.6 The Registrar will implement the Board's decision as soon as practicable and will advise the Appellant and the Board when it has done so.

### Costs

2.10.7 The Board may impose costs to any part to an appeal against the other party under section 338 of the Act which provides:

#### **338 Orders as to costs**

*On an appeal under this subpart, the appeal authority may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.<sup>1</sup>*

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<sup>1</sup> Under section 282 of the Act the board is the Appeal Authority for an appeal against a decision of the Registrar.

**Publication of Name and Particulars**

- 2.10.8 The Board will exercise its discretion to make orders as to the publication of names, and will not prohibit the publication of the name or particulars of the affairs of the Licensed Building Practitioner or any other person, unless the Board considers it proper to prohibit publication.
- 2.10.9 In exercising its discretion, the Board will consider the matters in s 339(2) of the Act.
- 2.10.10 Where Appeals concern the grant of a new licence, the Board will generally prohibit the publication of the name or particulars of the affairs of a Licensed Building Practitioner or any other person, unless the Board considers it proper for that information to be published.
- 2.10.11 A request for orders to prohibit publication may be made orally or in writing, provided that any submission in writing is made within the timeframe set by the Board at the conclusion of the hearing.

## Appendix One – Board Practice Direction: Rules for the use of Audio and Visual Links

### 1. Introduction

- 1.1 The Board deals with disciplinary matters and licensing appeals under the Building 2004 (the Act). Persons being disciplined or appealing a licencing decision have a right to appear and be heard.
- 1.2 To enable the fair and effective appearance by persons before the Board it may, at times, be necessary for persons to appear by way of an audio or a video link. These guidelines set out the criteria for and rules relating to those appearances.

### 2. General Criteria for Allowing use of Audio or Visual Links

- 2.1 Wherever possible a respondent, appellant or witness should appear before the Board in person.
- 2.2 The Board has adopted the provisions of sections 5 and 6 of the Courts (Remote Participation) Act 2010 (with necessary modifications) in determining whether a person can appear by way of and audio or visual link. The Presiding Member shall have the discretion as to whether an appearance by audio or visual link will be allowed.
- 2.3 The Presiding Member will consider the following criteria when he or she is making a determination on whether or not to allow the use of an audio or visual link for the appearance of any participant in a proceeding:
- (a) the nature of the proceeding;
  - (b) the availability and quality of the technology that is to be used;
  - (c) the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—
    - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Board; and
    - (ii) the level of contact with other participants; and
  - (d) any other relevant matters.
- 2.4 Where an audio or visual link is to be used in a disciplinary hearing in respect of the respondent's appearance the Presiding Member will also assess the potential impact of the use of the technology on the effective maintenance of the right of the respondent to a fair hearing, and on his or her rights associated with the hearing, and, in particular:
- (a) the ability of the respondent:
    - (i) to comprehend the proceedings;
    - (ii) to participate effectively in the conduct of his or her defence;
    - (iv) to access relevant evidence;
    - (v) to examine the witnesses; and
  - (b) the level of contact the respondent has with other participants; and
  - (c) any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and whether that adverse impression may be mitigated.



**3. Minimum Audio or Visual Requirements**

- 3.1 Teleconference link minimum requirements for remote participants:
- (a) a landline is preferable, if a mobile connection is to be used the signal must be strong and consistent;
  - (b) the participant must be in a quiet place and away from persons who are not connected to the proceedings;
  - (c) a speaker phone is not to be used unless there is more than one remote participant. If a speaker phone is being used, then it must be placed on mute until such time as a remote participant is speaking.
- 3.2 Video conference link minimum requirements for remote participants:
- (a) participants must use Skype and the data connection must be strong and consistent; and
  - (b) the participant must be in a quiet place and away from persons who are not connected to the proceedings.
- 3.3 A remote participant by video link will, at a minimum, be able to observe the Presiding Member. Participants by both audio and visual link must, at a minimum, be able to hear all participants in the hearing.
- 3.4 Failure to adhere to the above requirements may result in the remote participant being disconnected from the proceedings.

**4. Starting and Ending**

- 4.1 The connection to a remote participant to an audio or visual link will be made by the Board Officer. Connection details will be provided prior to the hearing. If necessary, the audio or visual link will be tested prior to a hearing commencing.
- 4.2 A connection will be made when the remote participant's evidence or participation is required and at the direction of the Presiding Member.
- 4.3 On a connection being made the Board Officer will introduce the Presiding Member who will inform the remote participant of the persons then engaged in the hearing.
- 4.4 The Board Officer will administer an affirmation if the testimony to be received is to be sworn evidence.
- 4.5 The Presiding Member will inform the remote participant of their role and will inform them of how and when they will participate.
- 4.6 The connection will be ended when the Presiding Member determines that the remote participant is no longer required.
- 4.7 Remote participants, other than a respondent, should not expect to be able to participate throughout the proceedings. If they do want to participate throughout then they must apply for permission to do by making an application to the Board Officer with their reasons. The Presiding Member will decide whether or not to grant the request.

**5. Technical Failure**

- 5.1 In the event of an equipment failure, technical issues or a failure to adhere with the minimum requirements which result in the Board or the remote participant not being able to be heard the connection will be terminated. No more than two attempts to re-establish an acceptable connection will be made. If one cannot be made the Presiding Member will decide on the appropriate action to then be taken.

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### 6. **Problematic Remote Participant**

- 6.1 If the remote participant fails to comply with any direction, or is acting inappropriately, the Presiding Member can direct that the link be disconnected. The Board Officer will then contact the remote participant and advise them of any directions or decisions that that the Board or Presiding Member have made.

### 7. **Recording**

- 7.1 All proceedings before the Board are recorded.