

Appeal Procedures

1. Scope

- 1.1 These procedures apply to appeals under section 330 of the Building Act 2004 (the Act) against licensing decisions made by the Registrar under the Act and the Licensed Building Practitioner Rules 2007 (the Rules).
- 1.2 The Board must comply with the principles of natural justice, which 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.
- 1.3 Under clause 27 of Schedule 3 of the Act, the Board may regulate its own procedures. The Board may depart from these procedures if it would be in the best interests of natural justice or if it would achieve the purposes of the Act.
- 1.4 In the event of any conflict between the provisions in these procedures and the Act, the Act will apply.

2. Filing an appeal

Time to File

- 2.1 Appeals must be filed no later than 20 working days after notice of the Registrar's decision is communicated to the Appellant (section 331(a) of the Act).
- 2.2 An appellant can apply to have an appeal accepted by the Board outside of the 20 working day time frame (section 331(b) of the Act). Any application must:
 - (a) be in writing;
 - (b) state the reasons why the appeal could not be filed within 20 working days;
 - (c) be accompanied by supporting evidence; and
 - (d) set out why the Board should accept the late appeal.
- 2.3 The Chair or Presiding Member may make a decision on an application to file an appeal out of time.

How to File

- 2.4 An appeal must be in writing on the approved form and signed and dated by the appellant. The form can be obtained on the Board's website. An appeal must be accompanied by:
 - (a) a copy of the Registrar's decision being appealed;
 - (b) a statement on the reasons why the appellant considers the Registrar's decision was wrong (the grounds for appeal);
 - (c) details of any persons who are going to represent the appellant.
- 2.5 On receipt of an appeal, it is to be filed on the Board's case management system (CMS), and written notice is to be given to the Registrar that an appeal has been received.
- 2.6 The Registrar is, within 15 working days of receipt of the notice, to file the following:
 - (a) a copy of the Registrar's decision;
 - (b) the evidence relied on by the Registrar when making the decision, which is to include a transcript of any interviews conducted;
 - (c) notice as to whether the Registrar intends to appear at a hearing in person or through legal counsel; and
 - (d) certification that the transcript is accurate.
- 2.7 A copy of the evidence filed by the Registrar is to be provided to the appellant within 5 working days of receipt.

3. Further evidence

- 3.1 An appeal is a rehearing. That means that the Board will make a decision on the evidence that was before the Registrar when the Registrar made their decision.
- 3.2 No new evidence will be admitted unless the appellant can satisfy the Board that it is fresh evidence. Fresh evidence is evidence that could not, without reasonable diligence, have been produced when the licensing application was originally made. It must also be credible and cogent, and there must be exceptional or compelling reasons why the evidence should be admitted.
- 3.3 An application to submit further evidence must:
 - (a) be in writing;
 - (b) state the reasons why the evidence could not be provided with the original licence application; and
 - (c) set out the reasons why the Board should accept the further evidence.
- 3.4 On receipt of an application to file further evidence, it is to be filed on the CMS, and written notice is to be given to the Registrar, who may, within 5 working days of the notice, file an objection to the further evidence being admitted.
- 3.5 The Chair or Presiding Member may make a decision on the application to file further evidence.

4. Determining an appeal

- 4.1 The burden of establishing that the Registrar's decision was wrong or that a different decision should be made sits with the appellant. They have to satisfy the Board that, on the balance of probabilities, the Registrar made the wrong decision or that a different decision should have been made.
- 4.2 The Board may deal with an appeal by:
 - (a) making a decision on the papers, which is a decision made on the basis of the evidence and submissions received only;
 - (b) holding an audio-visual hearing, where the appellant and the Registrar and/or their representatives appear by audio-visual link; or
 - (c) an in-person hearing held in a location convenient to the Board and the appellant.
- 4.3 The Chair or Presiding Member will decide how the appeal will be determined. Notice will be given to the parties of the means to be adopted, together with the date and time of the hearing and any other required details (the Notice of Hearing).
- 4.4 The Board may, at any point in the hearing, decide that one or more of the competencies have not been met and decline to proceed further with the hearing.
- 4.5 Either party may seek an alternative means by making a written application. If one party applies, the other will have a right to oppose the application within 5 working days of receiving notice of the application. The Chair or Presiding Member will then make a decision on the application.
- 4.6 The Chair or Presiding Member may direct that a prehearing conference is to be held prior to an audio-visual or in-person hearing to discuss the hearing procedures and to issue directions.
- 4.7 Prior to a matter being determined, either party to it may file submissions. Submissions are to be filed no later than 5 working days prior to the Board determining the matter. If one party files, the other will have a right of reply. Any reply must be filed within 2 working days of the Board dealing with the matter.

5. Audio-visual and in-person hearings

- 5.1 Hearings will be conducted in accordance with the following procedure:
 - (a) the appellant opens and presents their case;
 - (b) if further evidence is to be received, it will be taken as sworn testimony. The Board and the opposing party may cross-examine any witnesses;
 - (c) the Registrar or their representative will present their case; and
 - (d) the appellant will have a right of reply to the Registrar's submissions.

- 5.2 The Board will then deliberate and make a decision.
- 5.3 Hearings are conducted as public hearings. An application for a private hearing may be made in writing no later than 5 working days prior to the hearing. An application must state the reasons. If one party applies, the other will have a right to oppose the application within 2 working days of receiving notice of the application. The Chair or Presiding Member will then make a decision on the application.
- 5.4 An appellant who is to appear by an audio-visual link is to be provided with a copy of the Board's Practice Direction for AVL Hearings.

6. Adjournments

- 6.1 Either party may apply for an adjournment of an audio-visual or in-person hearing. An application is to be made in writing as early as possible and preferably no less than seven days prior to the hearing date. In exceptional circumstances, an appellant may make an adjournment application within seven days of a hearing.
- 6.2 An application for adjournment must specify in detail why the adjournment is sought and must be accompanied by supporting documents, such as medical certificates indicating the nature of the illness or other medical reasons requiring adjournment.

7. Decisions

- 7.1 Board decisions must be in writing. The Board may issue an oral decision at a hearing. If it does, a written decision will also be issued after the hearing.
- 7.2 Under section 335(3) of the Act, the Board may, in its decision:
 - (a) confirm, reverse, or modify the decision or action appealed against; and
 - (b) may make any other decision or take any other action that the decision-maker could have made.
- 7.3 Under section 337 of the Act, the Board may, instead of determining an appeal, direct the Registrar to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision or action.

8. Costs

- 8.1 Under section 338(4) of the Act, the Board may order any party to an 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. An application for costs can be made in either party's written submissions or by oral submission at a hearing.

9. Publication

- 9.1 Under section 339 of the Act, the Board may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of the appellant. An application for a prohibition order can be made in writing in advance of the hearing. An application must state the reasons why the order should be made. A decision on the application will be made when the appeal is determined.

Signed and dated this 11th day of June 2024.



M Orange, BPB Chair