



# Appeals Procedures

**Procedures for the management of appeals relating  
to Licensed Building Practitioners under the  
Building Act 2004**

## Introduction

The primary functions of the Building Practitioners Board under the Building Act 2004 (“the Act”) are to approve rules relating to building practitioners, investigate and hear complaints about licensed building practitioners and hear appeals against decisions of the Registrar of Licensed Building Practitioners.

The Act imposes on the Board a number of specific procedural requirements and a general obligation to observe the principles of natural justice. The Act otherwise leaves the Board free to regulate its own procedure.

This document contains procedures for hearing appeals of decisions of the Registrar under the Act. The procedures incorporate any specific statutory obligations imposed on the Board under the Act or other Acts, and any regulations made under the Act. It is recommended that Board members follow the procedures wherever possible in order to comply with natural justice requirements and operate clear and consistent processes.

This is a public document and is available on request from the Registrar of Licensed Building Practitioners, Department of Building and Housing, PO Box 10-729, Wellington or may be downloaded from the Department’s website [www.dbh.govt.nz](http://www.dbh.govt.nz)

Any suggested amendments to this document should be forwarded to the Registrar of Licensed Building Practitioners at the above address.

# CONTENTS

- 1. Interpretation**
- 2. General**
  - 2.1 Scope of procedures and policies**
  - 2.2 The legislative framework**
    - The Building Act
    - Regulations
    - Rules
  - 2.3 Roles and functions**
    - The Registrar
    - The Building Practitioners Board
    - The Minister for Building and Construction
    - Licensed Building Practitioners
- 3. Appeals to the Board**
  - 3.1 Introduction**
  - 3.2 Decisions of the Registrar that may be appealed**
  - 3.3 Notice of appeal right**
  - 3.4 Lodgement of an appeal**
    - Application requirements
    - Incomplete applications
    - Administration
  - 3.5 Registrar's report**
  - 3.6 Appeals lodged outside the statutory timeframe**
  - 3.7 Stay or suspension of original decision**
  - 3.8 Withdrawal of application for appeal**
  - 3.9 Pre-hearing conference**
  - 3.10 Hearings**
    - Setting a hearing
    - Hearing notice
    - Hearing location
    - Hearing administration
    - Quorum and presiding member
    - Conflicts
    - Who may be heard at a hearing
    - Witnesses
    - Order of proceedings
    - Hearings are public
    - Adjournments
    - Hearings on papers
    - Considering evidence
  - 3.11 Decision and implementation of decision**
    - Publication of names and details
    - Awarding costs

## 1. Interpretation

<b>Act</b>	means the Building Act 2004 and any subsequent amendment to that Act
<b>Appellant</b>	means a person who has appealed to the Board under section 330 of the Act against a decision of the Registrar
<b>Board</b>	means the Building Practitioners Board established by section 341 of the Act
<b>Board Secretariat</b>	means the person or persons delegated by the Registrar to carry out secretarial duties for the Board
<b>Chief Executive</b>	means the Chief Executive of the Department of Building and Housing or an employee of the Department delegated in writing by the Chief Executive to carry out the Chief Executive's functions under the Act
<b>Department</b>	means the Department of Building and Housing
<b>Disciplinary matter</b>	means an inquiry into, or complaint about, the conduct of a licensed building practitioner, or a decision on that inquiry or complaint
<b>Licensed Building Practitioner</b>	means a building practitioner 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 the Board for the purpose of undertaking Board business
<b>Member</b>	means a member of the Building Practitioners 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
<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
<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, or an employee of the Registrar delegated in writing to carry out the Registrar's functions under the Act

**Rules** means rules relating to licensed building practitioners made under section 361 of the Act meeting the requirements of section 353 of the Act

**Working Day** means any day except:

- (a) Saturday, Sunday, Good Friday, Easter Monday, ANZAC Day, the Sovereign's Birthday, Labour Day and Waitangi Day; and
- (b) the day observed as the anniversary of the province of which the area forms a part; and
- (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.

## **2. General**

### **2.1 Scope of procedures and policies**

2.1.1 These procedures apply to:

- (a) the hearing of appeals under the Building Act 2004
- (b) all members, parties to an appeal, and any other person assisting the Board or attending a Board meeting in relation to an appeal.

2.1.2 Every party to an appeal has the right to be treated in accordance with the principles of natural justice and to have those principles applied in every case.

2.1.3 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.

### **2.2 The legislative framework**

#### **The Building Act**

2.2.1 The Building Act 2004 replaced the Building Act 1991. 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 building practitioners and the setting of performance standards for buildings.

2.2.2 Part 4 of the Act deals with the regulation of building practitioners. Part 4 provides for:

- (a) the establishment of licensing classes
- (b) an entitlement to licensing and continued licensing
- (c) the establishment of the Building Practitioners Board
- (d) the establishment of a register of licensed building practitioners
- (e) a disciplinary regime
- (f) licensing offences
- (g) the development of rules relating to licensed building practitioners, including minimum standards of competence that must be met for licensing

## Regulations

- 2.2.3 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 Building Practitioners Board and the costs of administering the licensing function of the Registrar of Licensed Building Practitioners.
- 2.2.4 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 and chartered professional engineers.
- 2.2.5 Regulations prescribing the processes regarding complaints about a licensed building practitioner are expected to be made in early 2008.

## Rules

- 2.2.6 The Act requires there to be Rules relating to licensed building practitioners. Rules are to be prepared by the Chief Executive of the Department, approved by the Board, and “made” by the Minister for Building and Construction. The Rules are “deemed regulations”.
- 2.2.7 The Licensed Building Practitioners Rules 2007 came into force on 1 November 2007. The Rules set out the standards of competence that 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.

## 2.3 Roles and functions

### The Registrar

- 2.3.1 The Department of Building and Housing is responsible for administering the Licensed Building Practitioner Scheme. Specifically, the Registrar of Licensed Building Practitioners is appointed by the Chief Executive of the Department to:
- (a) establish and maintain a register of licensed building practitioners
  - (b) decide applications for licensing and continued licensing

- (c) license people, and cancel and suspend licensing
- (d) assist the Building Practitioners Board to receive and investigate complaints about licensed building practitioners
- (e) provide administrative support to the Building Practitioners Board.

### **The Building Practitioners Board**

2.3.2 The Building Practitioners Board is a statutory board with members appointed by the Governor-General on the recommendation of the Minister for Building and Construction.

2.3.3 The Board is independent of the Department of Building and Housing but has no statutory power of delegation. The Board is responsible for:

- (a) approving rules relating to licensed building practitioners that are prepared by the Chief Executive for recommendation to the Minister
- (b) receiving, investigating and hearing complaints about, and inquiring into the conduct of licensed building practitioners and disciplining them in accordance with the Act
- (c) hearing appeals against decisions of the Registrar not to license a person or to suspend or cancel a person's licensing
- (d) reviewing and reporting to the Minister for Building and Construction on the performance of the Board's functions and duties, and the exercise of its powers under the Act.

### **The Minister for Building and Construction**

2.3.4 The Minister for Building and Construction approves the Rules submitted by the Building Practitioners Board. Once the Minister approves the Rules they are "made" and have the status of deemed regulations.

### **Licensed Building Practitioners**

2.3.5 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
- (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
- (i) not holding themselves out to be licensed for work that is outside the scope of their licensing class(es).

### **3. Appeals to the Board**

#### **3.1 Introduction**

3.1.1 A person may appeal to the Building Practitioners Board against a decision of the Registrar to:

- (a) decline to license a person as a building practitioner
- (b) suspend or cancel his or her licensing.

3.1.2 The Act provides that:

- (a) appeals must be lodged within 20 working days after notice of the Registrar's decision is communicated to the Appellant, or within any further time period that the Board allows (s331)
- (b) appeals must be brought to the Board by notice in writing (s332)
- (c) appeals must be heard by way of rehearing (s335)
- (d) 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 (s335)
- (e) the Board must not review any decision or action or part of any decision or action not appealed against (s335)
- (f) instead of determining an appeal the Board may direct the Registrar to reconsider part or the whole of its decision (s337)

- (g) the Board may suspend the Registrar's decision pending the determination of an appeal (ss334)
- (h) the Board must issue its decision, and the reasons for its decision, in writing (s283)
- (i) the Board may order a party to the appeal to pay the other party's costs (s338)
- (j) the Board may prohibit the publication of names or particulars (s339)
- (k) the Board's decision on an appeal may be appealed to the District Court (s330)
- (l) the decision of the District Court on an appeal may be appealed to the High Court on a point of law (s340)

## 3.2 Decisions of the Registrar that may be appealed

3.2.1 The following decisions of the Registrar under the Act may be appealed to the Building Practitioners Board:

- a) The Registrar **declines** to license a building practitioner because the practitioner:
  - (i) fails to meet the minimum standard for licensing set out in the Rules for the licensing class applied for
  - (ii) is precluded from being licensed because of disciplinary action previously taken by the Board
  - (iii) has had his or her licensing, registration or recognition under another enactment in respect of a substantially equivalent occupation suspended or cancelled for a disciplinary matter within the last 5 years
  - (iv) has not paid the prescribed fee.
- b) The Registrar suspends a practitioner's licensing if the practitioner:
  - (i) fails to meet the minimum standard for continued licensing in the Rules
  - (ii) fails to confirm to the Registrar his or her intention to continue to be licensed and/or pay the prescribed annual charges
  - (iii) there is a pending disciplinary hearing against the practitioner (and suspension is necessary to protect the public).

- c) The Registrar cancels a practitioner's licensing if the practitioner:
  - (i) remains unable to meet the minimum standard for continued licensing in the Rules 12 months after his or her suspension
  - (ii) fails to confirm to the Registrar his or her intention to continue to be licensed and and/or pay the prescribed annual charges and late fee within 12 months after first being contacted.

### **3.3 Notice of appeal right**

- 3.3.1 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.

### **3.4 Lodgement of an appeal**

#### **Application requirements**

- 3.4.1 An application for appeal must be made on the *Application for Appeal* form available from the Board Secretariat or the Department. 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)
- (f) the relief sought.

- 3.4.2 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**

- 3.4.3 If an application for appeal is incomplete, the Board Secretariat 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.

- 3.4.4 Applications for appeal are deemed received by the Board on the day that they:
- (a) are delivered in person to the Board Secretariat
  - (b) are sent by fax or e-mail to the Board Secretariat
  - (c) would have been delivered to the Board Secretariat in the course of ordinary post.

### **Administration**

- 3.4.5 On receiving an application for appeal the Board Secretariat will:
- (a) stamp the application with the date of receipt
  - (b) open an appeal file by allocating an identifying file number to the application.
- 3.4.6 Subject to section 3.6 of these Procedures (“Appeals lodged outside the statutory timeframe”) the Board Secretariat will acknowledge in writing to the Appellant that his or her application for appeal has been received and that further correspondence including details about a hearing and hearing dates will follow.
- 3.4.7 Immediately after acknowledging an application for appeal that is “in time” (or after a late application has been allowed by the Board) the Board Secretariat 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.

## **3.5 Registrar’s report**

- 3.5.1 The Registrar must provide the Appellant and the Board Secretariat with a report, including a copy of all documents relevant to the appeal (eg. 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 Secretariat.

## **3.6 Appeals lodged outside the statutory timeframe**

- 3.6.1 An application for appeal that is received by the Board Secretariat outside the 20 working day statutory timeframe is a late application and will only be accepted if an extension of the timeframe is agreed by the Board.
- 3.6.2 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 Secretariat to make a request for an extension of time.

- 3.6.3 A request for an extension of time should set out in writing:
- (a) the reasons for the delay in making the application for appeal
  - (b) the steps taken by the Appellant to lodge the application on time.
- 3.6.4 On receiving a written request for an extension of time, either as part of an application for appeal or separately, the Board Secretariat 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.
- 3.6.5 The Board will consider requests for an extension of time as a priority.
- 3.6.6 Requests for an extension of time will be decided “on the papers” unless the Board determines otherwise.
- 3.6.7 The Board 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 Board may:
- (a) dismiss the request for an extension of time and dismiss the application for appeal
  - (b) allow the request for an extension of time and allow the application for appeal to proceed.

### **3.7 Stay or suspension of original decision**

- 3.7.1 Under 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 such an order is referred to as a “stay of decision”.
- 3.7.2 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.
- 3.7.3 On receiving a request for a stay of decision the Board Secretariat 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.
- 3.7.4 Immediately after acknowledging a request for a stay of decision the Board Secretariat will provide the Registrar with a copy of the request.

- 3.7.5 The Registrar must within 10 working days after being provided with a copy of a request for a stay of decision by the Board Secretariat, provide the Board with a written report setting out the reasons for the decision the request for a stay relates to.
- 3.7.6 Immediately after receiving a written report from the Registrar concerning a request for a stay of decision, the Board Secretariat will submit the Registrar's report and the Appellant's request for a stay of decision to the Board for consideration.
- 3.7.7 The Board will consider requests for a stay of decision as a priority.
- 3.7.8 Requests for a stay of decision will be decided on the papers unless the Board decides otherwise.
- 3.7.9 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) stay the decision until the appeal is determined
  - (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.

### **3.8 Withdrawal of application for appeal**

- 3.8.1 An Appellant may withdraw his or her application for appeal in writing to the Board Secretariat 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.
- 3.8.2 On receipt of notice of the withdrawal an appeal the Board Secretariat will immediately notify the Registrar and the Board in writing that the appeal has been withdrawn and close the appeal file.
- 3.8.3 The Board will exercise its discretion to award costs against or to a building practitioner who withdraws his or her appeal prior to a hearing.

### 3.9 Pre-hearing conference

3.9.1 As soon as practicable after an 'Application for appeal' that is "in time" has been acknowledged, the Board Secretariat will fix a time for a pre-hearing, and notify the pre-hearing Presiding Member and the Appellant.

The Board Secretariat may refer the Appeal to the Board for consideration prior to setting a pre-hearing.

3.9.2 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.

3.9.3 The Board will ensure that a substantive hearing is not unreasonably delayed by the scheduling of a pre-hearing conference.

3.9.4 Pre-hearing conferences will be conducted by the Chairperson or Deputy Chairperson of the Board and any other members of the Board appointed by the Chairperson or Deputy Chairperson for the purpose. A quorum of Board members is not required for a pre-hearing conference.

3.9.5 A pre-hearing conference will generally be conducted by teleconference but may, at the Board's discretion, be conducted in person.

3.9.6 At a pre-hearing conference the Board may:

- (a) investigate whether it has jurisdiction to hear the appeal or aspects of the appeal
- (b) clarify and/or refine the issues in dispute in respect of the appeal
- (c) facilitate the resolution or settlement of some or all of the disputed issues, if appropriate
- (d) agree a time and place for a substantive hearing, if any
- (e) agree procedural elements relating to the hearing including the timeframes for exchanging evidence and submissions
- (f) agree that a hearing is to be held in person or on the papers.

3.9.7 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.

## 3.10 Hearings

### Setting a hearing

- 3.10.1 Within 20 working days after an application for appeal that is “in time” has been acknowledged, the Board Secretariat will fix a time and place for a hearing, and notify the Board, the Registrar and the Appellant.

The Board Secretariat may refer the Appeal to the Board for consideration prior to setting a hearing.

- 3.10.2 Unless a pre-hearing conference is scheduled (section 3.9) a hearing must be held as soon as is practicable in the circumstances, provided that the Registrar and the Appellant are given at least 15 working days notice of the date of the hearing.

### Hearing notice

- 3.10.3 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
- (d) confirm who will be attending, who will be presiding, and who may be heard at the hearing
- (e) explain to the Appellant the requirements to:
  - (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
  - (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

- 3.10.4 Hearings (conducted in person) will generally be held, at the discretion of the Board, in the main centre nearest to where the Appellant lives.

- 3.10.5 An Appellant may request that his or her hearing is held in a main centre that is more convenient or appropriate for the Appellant and/or any witnesses he or she proposes to call.

### **Hearing administration**

- 3.10.6 As soon as practicable before a hearing the Board Secretariat 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
  - (c) the list of witnesses that the Appellant wishes to call (if any) has been distributed to the Board members attending the hearing.
- 3.10.7 A hearing is a meeting of the Board for the purposes of the Act and the provisions of Schedule 3 of the Act apply.

### **Quorum & presiding member**

- 3.10.8 A quorum for the hearing of an appeal is:
- (a) half the number of members of the Board if the Board has an even number of members
  - (b) a majority of the members if the Board has an odd number of members
  - (c) in any case, no fewer than three members.
- 3.10.9 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.

### **Conflicts**

- 3.10.10 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.
- 3.10.11 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**

- 3.10.12 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
  - (e) any other person with the permission of the Board.

### **Witnesses**

- 3.10.13 Subject to any directions given at a pre-hearing conference an Appellant intending to call witnesses must submit a list of witnesses to the Board at least 5 working days before the commencement of the appeal and may be required to provide briefs of evidence.
- 3.10.14 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.

### **Order of proceedings**

- 3.10.15 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
    - (iv) reading into the record a statement about the purpose of the hearing, including details of the decision(s) being appealed against
    - (v) providing a summary of the procedure that will be adopted for the hearing.
  - (b) the Appellant is sworn 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) the Registrar presents a report summarising the reasons for its decision.
- (e) the Appellant is invited to respond to the Registrar's report and make final comments
- (f) the Registrar may be invited to make final comments
- (g) members of the Board may ask questions of the Registrar, the Appellant or witnesses (if any) at any stage of the hearing
- (h) the presiding member invites the Registrar and the Appellant to make oral or written submissions regarding the award of costs against a party, reserving the Board's decision on the matter
- (i) the presiding member invites 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
- (j) 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.

### **Hearings are public**

- 3.10.16 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.
- 3.10.17 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**

- 3.10.18 Hearings will not be adjourned without good reason. The Board 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.
- 3.10.19 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.
- 3.10.20 If a hearing is adjourned the presiding member will, within 10 working days, fix a time and place for the resumption of the hearing, and notify the Registrar and the Appellant.

### **Hearings on the papers**

- 3.10.21 The Board may exercise its discretion to decide an appeal on the papers, including where the Appellant fails to attend a hearing without notifying the Board.

### **Considering evidence**

- 3.10.22 Appeals are to be heard by way of a “rehearing”.
- 3.10.23 The Appellant has the burden of proof on the appeal.
- 3.10.24 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.

## **3.11 Decision and implementation of decision**

- 3.11.1 The Board will deliberate in private before reaching a decision on an appeal. No persons other than Board members and the Board Secretary may be present.
- 3.11.2 A decision of the Board must be made by resolution voted by the majority of members.
- 3.11.3 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)
  - (d) make any other decision that the Registrar could have made.
- 3.11.4 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.
- 3.11.5 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 there was one
- (f) set out the right of appeal to the District Court under section 330(2) of the Act
- (g) set out the costs (if any) payable from one party to another and the timeframe for payment (within 60 days)
- (h) state whether the publication of the name or particulars of the affairs of the Appellant or any other person is prohibited.

3.11.6 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.

#### **Publication of name and particulars**

3.11.7 The Appellant may request that the Board prohibit the publication of the name or the particulars of the affairs of a licensed building practitioner or any other person.

3.11.8 In deciding whether to prohibit publication the Board will have regard to:

- (a) the interests of any person (including, but without limitation, the privacy of the person)
- (b) the public interest.

3.11.9 A request for prohibition on 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.

#### **Awarding costs**

3.11.10 The Board may, at its discretion, order the Registrar or the Appellant to pay any or all of the other party's costs incurred in respect of the appeal.

3.11.11 The Board may invite the Registrar and the Appellant to make submissions regarding the award of costs, 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.

- 3.11.12 If the Board decides that it does want to consider the awarding of costs, it will invite written submissions from the Appellant and the Registrar, and state the timeframe within which submissions must be received.
- 3.11.13 Any submission from the Registrar should be accompanied by a statement signed by someone other than the Registrar, attesting to the accuracy of the costs incurred.
- 3.11.14 In considering any submissions received, the Board will have regard to:
- (a) 'Costs' have been generally defined as 'the remuneration and expenses incurred in relation to a legal action'
  - (b) Costs would not normally be deemed to cover the salary of the parties, but would cover expenses he/she incurred, such as commissioning reports from assessors/advisors, travel, accommodation, printing and similar items
  - (c) Relevant costs are those incurred after the date of lodgement of the appeal.
  - (d) Orders should be limited to a fair and reasonable contribution towards the successful party's costs incurred in enforcing or defending their rights (known as party-party costs)
  - (e) It is not usual for the full amount of costs incurred to be awarded, but a reasonable proportion (based on a scale) having regard to the hearing being an uncertain process for both of the parties
  - (f) The merits of the 'loser's case'. For example, if an appeal is brought that has little merit and is not actively advocated by that party, it might be reasonable that he/she meet a high proportion of the successful party's costs
  - (g) Costs will not generally be awarded against or to a building practitioner who withdraws his or her appeal prior to a hearing
- 3.11.15 After considering the written submissions, and having regard to the matters outlined in 3.11.14 above, the Board will decide whether to order the Appellant or the Registrar to pay a specified amount of costs to the other party
- 3.11.16 The Board will exercise its discretion to award costs but will generally not award costs against or to a building practitioner who withdraws his or her appeal prior to a hearing.