

What you need to know about

the Building Appeals Board



Printed August 2007

Need more information?

Telephone +61 3 9285 6400 Facsimile +61 3 9285 6410
Level 27, 2 Lonsdale Street, Melbourne, Victoria, 3000

publicrelations@buildingcommission.com.au
www.buildingcommission.com.au

What is the Building Appeals Board (BAB)?

The BAB is an independent statutory body established under the *Building Act 1993* (the Act). It seeks the best possible building outcomes for the building industry and the community as a whole.

It is empowered to determine any matter relating to the Regulations, the *Building Code of Australia* (BCA) and specified provisions of the Act. The aim is to achieve building safety, amenity and sustainability outcomes matched to community goals. To achieve the best possible outcomes requires an ability to make judgements on the applicability of codes and rules in particular cases.

What services does it offer?

The BAB offers a variety of services including:

- hearing appeals and disputes in relation to building control matters
- the ability to waive, modify or vary the provisions of particular regulations based on the particular case
- determining that a particular design or element of a building complies with the Act and Regulations.

Why seek a BAB decision?

- Decisions are made by panels of building experts who bring many years of experience to the process
- Decisions by the BAB can save you money as legal representation is not required
- Decisions are made quickly and cannot be appealed, except to the Supreme Court on matters of law. Furthermore, the BAB has the ability to fast track appeal matters when an urgent decision is required.

The BAB provides services under three categories

Appeals

Do you want to appeal against a decision of:

- a building surveyor?
- the Building Practitioners Board?
- the Building Commission?
- the local council?

Disputes

Are you in a dispute about:

- the applicability of the *Building Regulations 2006* (the Regulations) which includes the BCA?
- adjoining property protection work?
- inspections?

Compliance & modifications

Do you want a decision on:

- whether a design or element of a building complies with the Act and Regulations (compliance)?
- whether a provision of the Regulations does not apply to a particular building (modification)?

Appeals

What are appeals?

Appeals to the BAB are re-hearings of decisions made by persons or bodies having the power to decide certain matters under the Act. In the course of this review process, the BAB may consider matters not raised prior to the hearing.

For examples of past determinations please refer to www.buildingcommission.com.au

Who can apply?

An appeal can be lodged with the BAB by an owner or purchaser of a building or land, an agent of the owner, a prescribed reporting authority, a building surveyor, the Building Commission, a building practitioner, the Building Practitioners Board and the adjoining owner (on matters involving protection of adjoining property).

Disputes

What is a dispute?

The BAB hears disputes about a building, building work or proposed building work, where it concerns the application, compliance or effect of any provision of the Regulations.

For examples of past determinations please refer to www.buildingcommission.com.au

Who can apply?

An application for a dispute hearing can be lodged at the Building Appeals Board (BAB) by the owner of the building or the land on which the building work is being, or is to be, carried out, the person who carries out, or is to carry out the building work, the relevant building surveyor or the Building Commission.

Achieving better outcomes for the building industry and consumers.

Compliance and Modifications

What is a modification?

A request for a modification can be made to the BAB where it is felt that a provision of the Regulations (which includes the BCA and associated Standards) either does not apply or should apply in relation to a building or land.

Modifications will only be granted where the BAB is satisfied that, in the particular circumstances, the provision is inappropriate and that a modification would be reasonable and not detrimental to the public interest.

For examples of past modifications please refer to www.buildingcommission.com.au

Who can lodge a modification?

An application for a modification can be lodged with the BAB by an owner of the building or land, or by the agent of an owner.

Practice Note 2006-39, located on the Building Commission website, contains a guide and examples of modification applications that can help you to prepare a submission.

The application process for appeals and disputes

How do I apply?

All applications for hearings at the BAB must be made on the forms available from the Building Commission website (www.buildingcommission.com.au). Applications may be made in person or by mail.

How long does it take?

Appeals/disputes are generally determined within eight weeks of a properly-completed application.

Should applicants seek an appeal to be determined more rapidly than by the normal process, an application can be made for it to be treated as a 'fast track' appeal.

For a matter to be treated as a 'fast track' appeal you must submit strong reasons for consideration by the BAB. Only if the request is granted, the matter is to be dealt with within five business days of the request being granted.

Information to accompany an appeal or dispute

For the BAB to hear an appeal or dispute appropriately and make a well judged determination, the quality of the submission is important.

It is important the relevant application form is completed accurately to avoid delays. When preparing the submission to accompany the application form, the following information, as indicated in the form, should be incorporated:

- nature – what you are appealing?
- grounds – what are the reasons for the appeal?
- relief sought – what do you want the outcome to be?

Five copies of the application and five copies of all relevant documentation, plans, drawings and photos MUST be enclosed with the appropriate fee. If the application is not complete the appeal process will be delayed.

How is the application processed?

Once an application is received, it undergoes a preliminary assessment. An Appeal Officer will review the information submitted to ensure that all relevant material has been provided and that the application has been lodged within the prescribed appeal period.

The file is then passed to the Registrar who will assess the Nature, Grounds and Relief to ensure that a full assessment has been undertaken. If an application is not complete the applicant will be asked to submit further information.

The aim is to achieve building safety, amenity and sustainability outcomes matched to community goals.

What do I need to know about the hearing?

Notice of Hearing

You will receive a *Notice of Hearing* which sets out the time, date and venue at which the appeal is to be heard and contains details of the nature of the appeal. Parties to an appeal should ensure that any witnesses they wish to be present or to be questioned on their behalf are given adequate notice.

Attendees

All parties to an appeal may attend the hearing and are encouraged to do so in order to present their case. Alternatively, they may also nominate someone to attend on their behalf.

If an applicant cannot be present at a hearing, they may forward a written submission or rely on material already lodged with the BAB. The Registrar must receive written material no later than 7 days before the hearing.

Board members

The Panel is selected from BAB members to ensure the members will have expertise relating to the subject matter of the hearing.

How the hearing proceeds

The hearing will begin with the Chairperson making opening remarks and confirming that both parties agree to the nature of the hearing.

The party making the appeal (the appellant) will then be asked to present information in support of their application. Panel members and the other party (the respondent) to the appeal may then ask questions to clarify any points made by the appellant.

Following this, the respondent to the appeal is invited to provide information to support their case. Panel members or the appellant may then ask questions in order to clarify any points being made.

Hearings are not required to proceed in a formal manner, but are bound by the rules of natural justice, with all parties being given an opportunity to state their case. Evidence is not usually given on oath, but parties are reminded that it is an offence to give false or misleading information.

Witnesses

Witnesses may appear for either party to support their case. However, witnesses (such as adjoining owners) are not legally considered to be parties to an appeal. Witnesses should only make submissions to the BAB through the party they are supporting. This is because each party is expected to retain responsibility for the overall coordination and presentation of their own case.

Site inspections

Building site inspections are carried out at the discretion of the Panel hearing the appeal. An inspection will be carried out if it is considered that the matters subject to appeal would not be fully appreciated unless an inspection of the site were undertaken.

Additional information

Submission of additional information after a hearing has been completed should not be necessary unless requested by the Panel hearing the matter. Parties should ensure their case is adequately presented on the day of the hearing. In exceptional circumstances, the BAB has the discretion to consider additional information.

Submission of additional information from witnesses or adjoining owners must be made through an appellant or a respondent. No consideration can be given to information received after a decision has been made by the Board.

An appeal by a building practitioner

An appeal made by a building practitioner initiates an independent re-hearing of any decision made by the Building Practitioners Board (BPB). In doing so the BAB may consider matters not raised prior to the hearing.

In considering such a matter, the BAB has all the powers of the BPB in relation to the decision under appeal, in addition to any other powers conferred under the Act.

The Regulations require that these appeals be made within 60 days of the decision of the BPB.

Generally the Chairperson for a practitioner appeal will be a legal practitioner.

The hearing will be recorded and a party to the hearing may request a copy of the transcript. However, a cost is associated with this service.

How is the Board's decision communicated?

The decision is mailed to the applicant unless unusual circumstances require a faster method. The applicant may also collect the determination from the BAB office.

Is the decision final?

The decision is final and binding and must be put into action by all parties to a hearing. The BAB can provide a statement of the reasons for its decision if requested by a party to the appeal.

The application process for compliance and modifications

How do I apply?

All applications for hearings at the BAB must be made on the forms available from the Building Commission website (www.buildingcommission.com.au). Applications may be made in person or by mail.

How long does it take?

Modification applications are generally determined within four weeks of a properly completed application, however this may vary depending on the quality of the submission and any need to refer an application to the appropriate authorities/bodies for comment.

Information to accompany a modification/compliance application

For the BAB to determine a modification or compliance application, the quality of the submission is important. It is important the relevant application form is completed accurately to avoid delays. When preparing the submission to accompany the application form and fee(s), the following information, as indicated in the form, should be incorporated:

- provide the background of the proposal
- provide comments from the relevant building surveyor where the application relates to a building permit
- provide the nature of the modification(s) or compliance assessment(s)
- where the application relates to the Building Code of Australia (BCA) nominate the relevant primary Performance Requirement(s) together with the applicable Deemed to Satisfy Provision(s). Also nominate which edition of the BCA is to be referred to.
- indicate why the regulation is inappropriate and why it is reasonable to vary the regulation
- where the application relates to a BCA Performance Requirement(s), the applicant must provide commentary on the implications for each of the individual clauses of the Performance Requirement
- provide commentary on the issues relevant to the regulation to be modified.

Please refer to the Building Commission website: www.buildingcommission.com.au, in particular Practice Note 2006-39, that contains examples of modification and compliance applications that can be used as a guide to assist in preparing your submission.

You should provide three copies of the application and three copies of all relevant documentation including plans, drawings and photos which must be marked up to highlight determination(s) sought.

Additional copies are required for applications where comments will be sought from the referral authorities/bodies such as the MFB, CFA, Municipal Building Surveyor, Department of Human Services or Heritage Victoria (refer to Practice Note 2006-39).

How is the application processed?

Once an application is received, it undergoes a preliminary assessment by a technical advisor. He or she will review the information submitted to ensure that all relevant material has been provided (including comments from relevant authorities). This ensures that a full assessment will not be delayed due to a lack of basic information or confusion about the nature of the modification being sought.

How much will it cost?

For a comprehensive fee schedule for appeals, disputes and modifications visit www.buildingcommission.com.au.

The BAB is not legalistic and efforts are made to minimise costs for applicants. Generally, parties pay their own costs regardless of the outcome of a hearing, but there are special cost arrangements in relation to 'fast track' appeals.

The BAB has the power to award costs in certain circumstances. Claims for costs, including support details of those costs, must be made in writing when the application is lodged or during the appeal hearing.

The Building Commission is a statutory authority set up by the *Building Act 1993*. The Commission supports the function of the Building Appeals Board and is committed to the following objectives:

- regulatory excellence – delivering effective and responsible industry governance
- industry responsibility – supporting government and stakeholders to transform the industry
- environmental best practice – ensuring a sustainable built environment
- community accountability – ensuring safe building services for the community.