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in the following brochures:

What you need to know about the Building Appeals Board

-What you need to know about the Building Appeals Board – Disputes

*What you need to know about the Building Appeals Board –
Modifications*

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What you need to know about

the Building Appeals Board – Appeals



What is the Building Appeals Board?

The Building Appeals Board (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.

This brochure provides an overview of one of the roles and functions of the BAB.

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. Appeals are reviews of these decisions and in the course of this review process, the BAB may consider matters not raised prior to the hearing.

The following case study provides a greater insight into how the BAB may assist you with an appeal:

You are building a house and due to the specific constraints of the allotment you need to site the house 4.5 m from the front boundary of the allotment. However, the siting regulations require the house to be sited 5 m from the front boundary of the allotment.

You can apply to the local council for an approval to reduce the frontage setback. Should the council refuse your application, you can appeal the decision to the BAB to request permission for your house to be sited 4.5 m from the front boundary.

Who can apply?

An appeal can be lodged with the BAB by an owner or purchaser of 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).

How do I apply?

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

Should an application be faxed, it will be registered but no further action on the application will occur until the original documents are submitted.

The application must be accompanied by the appropriate fee and all necessary documentation as indicated in the application form.

How long does it take?

Appeals are generally determined within approximately eight weeks of an application.

Should applicants seek an appeal be determined more rapidly than by the normal process, an application can be made by any party to an appeal, to have it treated as a "fast track appeal". If the BAB grants the request, it must begin to hear or otherwise deal with the appeal within two business days of the request being made.

What does it cost?

For a comprehensive fee schedule for BAB Appeals 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. However, the BAB has the power to award costs in certain circumstances. Claims for costs, including supporting details of those costs, must be made in writing when the application is lodged or during the appeal hearing.

All parties to an appeal may attend the hearing and are encouraged to do so in order to present their case.

What do I need to know about the hearing?

Notice of Hearing

The *Notice of Hearing* 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 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 be represented by a nominee.

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 the day prior to the meeting.

Board members

The Panel which hears the appeal will be selected from the BAB members in an impartial manner, with due consideration given to the skills required to deal with matters which are the subject 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 arguments 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 arguments 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 to an appeal being given an opportunity to state their case.

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 co-ordination 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 felt 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 (including that from witnesses and adjoining owners) must be made by or through a party to the matter under consideration. No consideration can be given to information received after a determination has been made.

An appeal by a building practitioner

An appeal made by a building practitioner initiates a complete independent rehearing 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 at a practitioner hearing is 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 conveyed?

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 effect 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.

Inspections of sites and buildings are carried out at the discretion of the Panel hearing the appeal.