



Licensing Manual 2006

Section 10

Appeals

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Summary

1. Appeals are granted for the purposes of ensuring that decisions made pursuant to this Manual are equitable, consistent, and correct, and contribute to the purposes of licensing;
2. A party may appeal on the basis that a decision:
 - 2.1. Is inconsistent, incorrect, or inequitable;
 - 2.2. Did not factor in all relevant evidence;
3. A party may also appeal where:
 - 3.1. There has been procedural defects of significant magnitude;
 - 3.2. The licensing party making a decision exceeded its delegated duties;
 - 3.3. Any decision made subject to this Manual is likely to have a materially adverse impact on the livelihood of the party;
 - 3.4. Where the Board or its delegate(s) considers the circumstances to be appropriate;
4. A letter of appeal must be received by the Board or its delegate(s) within twenty one (21) days or any period deemed relevant by the Board or its delegate(s) from the date a decision is received by the appellant;
5. The Board or its delegate(s) may choose to conduct an appeal in the manner it considers appropriate, however, appeals may be undertaken in the following ways:
 - 5.1. Written form (read and assess) by a multi-person panel;
 - 5.2. Written form (read and assess) by a one (1) person panel (authorised officer panel);
 - 5.3. Oral hearing with a multi-person panel;
 - 5.4. Oral hearing with a one (1) person panel (authorised officer panel);

Appeals

Due to the wide variety of circumstance specific appeals that may be filed, the following appeal provisions shall be read generally. Where paragraphs do not apply to the circumstances of the appeal, they may be applied in spirit or omitted.

APP 1 Purpose of appeals

- 1.1 Appeals are granted for the purposes of ensuring that decisions made pursuant to this Manual are equitable, consistent, and correct, and contribute to the purposes of licensing (as defined in paragraph GI 1 “Purposes of licensing” within the “General Information” section).

APP 2 Grounds for appeals

- 2.1 A party may appeal on the basis that a decision, in the opinion of the appellant:
 - 2.1.1 Is inconsistent, incorrect, or inequitable;
 - 2.1.2 Did not factor in all relevant evidence;
- 2.2 A party may also appeal where, in the opinion of the appellant:
 - 2.2.1 There have been procedural defects of significant magnitude;
 - 2.2.2 The licensing party making a decision exceeded its delegated duties;
 - 2.2.3 Any decision made subject to this Manual is likely to have a materially adverse impact on the livelihood of an applicant for licensing or an existing Licensed Building Control Officials;
 - 2.2.4 Where the Board or its delegate(s) considers the circumstances to be appropriate;

APP 3 Who may participate in an appeal

- 3.1 A party affected by a decision in a manner prescribed in paragraph APP 2 may appeal to the Board or its delegate(s) by filing a letter of appeal in a form described within paragraph APP6 “Form of appeal letter”, and in accordance with paragraph GP 10 “Filing documents” in the “General Provisions” section;
- 3.2 The Board may delegate responsibilities under this section to an officer of the Institute not subject to the appeal (from here forward the officer shall be referred to an authorised officer);
- 3.3 An officer or panel member of the Board or its delegate(s) whose decision is appealed. Where an appeal relates to a decision of a panel the Board or its delegate(s) shall designate one (1) person as respondent;

- 3.4 The Board or its delegate(s) may direct that another person be added as a party to the appeal.

APP 4 Time limits for appeal

- 4.1 A letter of appeal must be received by the Board or its delegate(s) in accordance with paragraph GP 10 “Filing documents” of the “General Provisions” section within twenty one (21) days or any period deemed relevant by the Board or its delegate(s) (see paragraph GP 12 “Time allocated for proceedings”, “General Information” section) from the date the decision is notified to the appellant at the appellant’s most recent address, or from an earlier date, where the appellant had earlier notice of the decision;
- 4.2 The Board or its delegate(s) may extend the time for filing a letter of appeal. To extend the time to appeal, the appellant shall communicate his or her intention in written form, and show there is good cause that precludes the filing of the letter within the twenty one (21) day or any period deemed relevant by the Board or its delegate(s) limitation period;
- 4.3 If an appellant seeks an extension of time after the lapse of the twenty one (21) day period or any period deemed relevant by the Board or its delegate(s), the appellant’s application and submission in support for the extension should be included with the letter of appeal. The Board or its delegate(s) has no obligation to allow the extension.

APP 5 Factors for extensions of time

- 5.1 The Board or its delegate(s) may extend an appeal date, or extend the time available to a party to respond to questions in a read and assess appeal. To seek an extension, the party shall apply to the Board or its delegate(s) in written form within seven (7) days or any period deemed relevant by the Board or its delegate(s) of receiving an appeal confirmation notice or within three (3) days or any period deemed relevant by the Board or its delegate(s) of a response deadline, and show there is good cause for the extension. Decisions on the granting of extensions of time shall be based on the evidence and circumstances of the particular appeal, and the type and weight of the factors offered for the extension. The merits of the appeal are not a factor which shall be considered on deciding extensions of time;
- 5.2 The factors which may give rise to an extension include:
 - 5.2.1 Length of the extension required by the appellant;
 - 5.2.2 A limiting medical condition;
 - 5.2.3 Distance;
 - 5.2.4 Career movements;

- 5.2.5 Circumstances beyond the control of the appellant which prevents him or her from complying;
- 5.3 The weight given to each factor provided by an appellant in relation to an extension of time shall depend on the circumstances of the case. The Board or its delegate(s) may rely upon factors not listed. None of the factors, either alone or together, is necessarily determinative. All factors shall be considered in light of the overriding responsibility of the appellant to exercise reasonable diligence in pursuit of his or her right to appeal;
- 5.4 Regardless of the cause(s) shown for an extension and the time requested by the appellant, the Board or its delegate(s) may specify the time for extension;
- 5.5 Applications for an extension shall be dealt in accordance with the spirit of paragraph INT 6 "Notice to an interviewee". All references to complaints shall be struck out, and references to "interview" shall be replaced with "appeal";

APP 6 Form of appeal letter

- 6.1 A letter of appeal shall identify the decision being appealed. The letter of appeal should:
- 6.1.1 Contain the appellant's contact details;
 - 6.1.2 Explain how the appellant is affected or aggrieved by the decision;
 - 6.1.3 Detail the grounds for the appeal in terms of paragraph APP 2 "Grounds for appeal";
 - 6.1.4 Describe reasons why the appeal was filed after the twenty one (21) day or any period deemed relevant by the Board or its delegate(s) limitation period, and/or the reasons why the appellant required an extension of time for filing;
 - 6.1.5 Detail particular needs, for example, due to a disability;
 - 6.1.6 Set the outcome(s) sought;
 - 6.1.7 Where available, be supported by sufficient, relevant and reliable evidence in accordance with the "Evidence" section. Where the evidence is not available, when the evidence shall be available and a description of the evidence;
 - 6.1.8 Set out the appellant's preference regarding the form of appeal (see paragraph APP 10 "Form of appeal") including reasons for the form requested
 - 6.1.9 Be signed by the appellant as a statutory declaration;
- 6.2 Where the grounds of appeal relate to evidence that was apparently not

considered by or disclosed, the written appeal must provide the evidence;

- 6.3 Where appellants fail to provide an adequate letter of appeal in accordance with this section, the Board or its delegate(s) may:
 - 6.3.1 Require the appellant to file a completed letter of appeal on a standard form directing an authorised officer to correspond with the appellant to ensure compliance;
 - 6.3.2 Suspend appeals where the requirements have not been met. The appeals process requires substantial, rather than strict, compliance;
- 6.4 If the Board or its delegate(s) has reason to believe that a party has:
 - 6.4.1 Knowingly misrepresented any facts or circumstances;
 - 6.4.2 Failed to comply with a reasonable and lawful requirement made by any individual or group with the authority to manage appeal proceedings;He or she shall be subject to proceedings under sub-paragraph (6.3).

APP 7 Suspensions

- 7.1 An appeal is considered suspended when it is held in abeyance pending a particular event. A postponement, on the other hand, refers only to the rescheduling of a hearing to a later date;
- 7.2 The Board or its delegate(s) may suspend an appeal at the request of the appellant or of any member of a panel constituted to hear the appeal on the grounds listed within sub-paragraph (7.4) below. The Board or its delegate(s) shall notify parties to the appeal of a suspension. Generally, suspensions shall not be granted for a period exceeding six (6) months;
- 7.3 The appellant is notified that he or she may reactivate the appeal upon written request to the Board or its delegate(s) before the expiry of the suspension period. The initial time period may be extended by the Board or its delegate(s). At the expiry of the designated period, the appeal is treated as abandoned (see paragraph APP 9 "Abandonment") if it has not been reactivated or re-suspended by the appellant;
- 7.4 The following are the usual grounds for suspending an appeal:
 - 7.4.1 A further recommendation is pending from a licensing party;
 - 7.4.2 The appellant is unable to participate in the appeal or to instruct his or her representative due to illness of indeterminate length;
 - 7.4.3 Maternity or paternity;
 - 7.4.4 Overseas movements;
 - 7.4.5 Any other circumstances deemed relevant by the Board or its

delegate(s).

APP 8 Withdrawals

- 8.1 An appellant may withdraw his or her appeal by so informing the Board or its delegate(s) in writing. The withdrawal shall be confirmed in writing by the Board or its delegate(s) within two (2) days or any period deemed relevant by the Board or its delegate(s);
- 8.2 Written material (evidence and argument) submitted to or obtained by the Board or its delegate(s) in the course of considering an appeal becomes part of the Licensed Building control Official's file even if the appeal is withdrawn.

APP 9 Abandonment

- 9.1 The Board or its delegate(s) shall treat an appeal as abandoned where the appellant apparently does not intend to pursue the appeal. The Board or its delegate(s) shall notify the appellant that his or her appeal shall be treated as abandoned unless satisfactory reasons for the failure to, for example, appear are provided in writing.

APP 10 Form of appeal

- 10.1 The Board or its delegate(s) may choose to conduct an appeal in the manner it considers appropriate, however, it shall comply with the relevant paragraphs of the "General Provisions" section. Appeals may be undertaken in the following ways:
 - 10.1.1 Written form (read and assess) by a multi-person panel;
 - 10.1.2 Written form (read and assess) by a one (1) person panel (authorised officer panel);
 - 10.1.3 Oral hearing with a multi-person panel;
- 10.2 Both one (1) person (authorised officer) and multi-person interview panels shall be referred to from here on as the "panel";
- 10.3 Generally, the method of appeal may be based on the following guidelines:
 - 10.3.1 An oral hearing with a multi-person panel is the preferred option regardless of the substantive issue or the appellant's preference where:
 - 10.3.1.1 The credibility of the appellant and/or the reputation of the Institute is a significant factor;
 - 10.3.1.2 The community's interests and/or confidence is a significant factor;
 - 10.3.1.3 The development and protection of the building control profession is a significant factor;

- 10.3.1.4 The decision subject to the appeal is likely to have a materially adverse impact on the appellant;
- 10.3.1.5 The Board or its delegate(s) considers it appropriate;
- 10.3.2 Where the issue is purely policy and/or procedure based, and the evidence and the factors listed in sub-paragraphs (10.4.1.1) to (10.4.1.3) are not at issue, either a written form (read and assess) by a multi-person panel or by a authorised officer panel may be used;
- 10.3.3 Where an appellant has valid reasons for objecting to an oral hearing, a written form (read and assess) by a multi-person or authorised officer panel shall be used, e.g. an appellant is in poor health and would find traveling to the location of a oral hearing difficult;
- 10.4 Where a member of a panel wishes to change the method of appeal originally assigned:
 - 10.4.1 In the case of a multi-person panel, he or she shall recommend the change to the panel (the decision to change will be decided by majority vote). If a change is voted, then a recommendation shall be put to the Board or its delegate(s);
 - 10.4.2 In the case of an authorised officer panel, a recommendation shall be put to the Board or its delegate(s);
- 10.5 Applications for a change in the assigned method of appeal shall be dealt in accordance with the spirit paragraph INT 6 “Notice to an interviewee”. All references to complaints shall be struck out. References to “interview” shall be replaced with “appeal”;

APP 11 Duration and expedited appeals

- 11.1 Panels shall attempt to accommodate expedited appeal requests while considering the respondent's right to proper notice of the appeal and of the hearing;
- 11.2 Panels shall exercise reasonable control over the mode of an appeal so as to ensure its effectiveness and the ascertainment of sufficient, relevant and reliable evidence in order to enable reasonable conclusions to be logically drawn.

APP 12 Evidence

- 12.1 Appellants and respondents shall submit evidence in accordance with the “Evidence” section;
- 12.2 A panel has the right to seek evidence to assist with its assessments.

APP 13 Disclosure

- 13.1 Parties to an appeal are entitled to disclosure of all new evidence submitted by parties or obtained by a panel, and to notice of any new issue(s) identified by a panel in the course of an appeal with time to respond (fourteen (14) days or any period deemed relevant by the Board or its delegate(s));
- 13.2 Parties are entitled to disclosure of opinion or expert evidence obtained by a panel, which is to be used in a particular appeal. However, there is no right to disclosure of general information referred to by a panel simply to enhance its understanding of a subject related to the appeal;
- 13.3 New evidence need not be disclosed to the parties where the information merely confirms evidence, which has already been disclosed;
- 13.4 Written submissions received in response to new evidence are generally not exchanged between the parties where the written argument does not contain new evidence;

APP 14 Written appeals General

- 14.1 A read and assess appeal involves consideration of the appeal by means of an assessment of the evidence and argument submitted by the parties, and any further evidence obtained by a panel in accordance with the "Assessment" section;
- 14.2 Read and assess appeals may be considered by a authorised officer or multi-person panels;
- 14.3 The Board or its delegate(s) shall determine the form of appeal, and within seven (7) days or any period deemed relevant by the Board or its delegate(s) from the date the letter of appeal is received, shall send a letter to the appellant acknowledging the appeal, confirming the appeal method, and informing the appellant of the time period which shall be allowed for submissions and new evidence;
- 14.4 For a multi-person panel (read and assessment), the Board or its delegate(s) shall allow twenty one (21) days or any period deemed relevant by the Board or its delegate(s) from the date of the acknowledgment letter for the parties to an appeal to obtain disclosure and file submissions and new evidence;14.5
For a authorised officer panel (read and assessment) parties to an appeal are allowed fourteen (14) days or any period deemed relevant by the Board or its delegate(s) to obtain disclosure and file submissions and new evidence;
- 14.6 Submissions from an appellant are filed with the respondent, and submissions by the respondent are filed with the appellant with a requirement to provide a reply on the material presented as it relates to the appeal subject

matter within fourteen (14) days or twenty one (21) days or any period deemed relevant by the Board or its delegate(s) (depending on the form of appeal) to the panel.

Once responses are obtained which satisfactorily address the subject matter of the appeal from all parties, the matter shall be put to adjudication. The panel shall exercise reasonable control over this process so as to make it as rapid and as effective as possible for the ascertainment of evidence;

14.7 If no submission is received from the appellant within the designated period, the respondent is so informed and allowed fourteen (14) days or any period deemed relevant by the Board or its delegate(s) for submissions. Where the appellant fails to provide a submission after one (1) attempt to secure it by the panel, the appeal shall be treated as abandoned (refer to paragraph APP 9 "Abandonment").

Extensions of time for submissions and evidence

14.8 It is the responsibility of parties to an appeal to contact the Board or its delegate(s) within the designated time period to request an extension of time;

14.9 Requests for extensions shall be granted based on the provisions set forth in paragraph APP 5 "Factors for the extension of time" of this section;

14.10 Requests for extending time are considered by the Board or its delegate(s) based on the weights of the factors set forth;

14.11 Requests for extensions of time which are made after a panel has begun consideration of the appeal are at the panel's discretion;

Late submissions

14.12 Where the appellant fails to provide a submission after one (1) attempt to secure it by a panel, the appeal shall be treated as abandoned (refer to paragraph APP 9 "Abandonment"). The remedy available to the appellant is a new appeal, unless deemed otherwise by the Board or its delegate(s);

Specific matters

14.13 Written hearings are subject to the "General Provisions" section; 12

14.14 The relevant procedures referred to in the "Interview" section shall apply to written hearings. References to "interview" shall be replaced with "hearing".

Adjudication of the appeal

14.15 Submissions (from the appellant and respondent) for read and assess appeals are assessed (in accordance with the "Assessment" section) by each member in a multi-person panel, in turn, and then passed to the Chair. Any member may call a meeting of the panel to discuss any issue on the appeal, including the need for further assessment. The preliminary recommendation,

written by one of the members, shall be reviewed and signed by the panel.
The process used to finalise recommendations is provided in paragraph APP 19 “Preliminary recommendation finalisation”;

- 14.16 A panel shall prepare an assessment report in accordance with paragraph INV 2 “Assessment report”, of the “Assessment” section;
- 14.17 Panels act by simple majority vote. Any panel member may dissent from the majority recommendation. If there is no majority, the finding of the person presiding over the panel is a finding of the panel;
- 14.18 In the case of an authorised officer panel, the member shall assess submissions (in accordance with the “Assessment” section). The preliminary recommendation, written by the person, shall be signed. The process used to finalise recommendations is provided in paragraph APP 19 “Preliminary recommendation finalisation”;
- 14.19 In order to expedite the issuing of findings, where multi-person panel members are unavailable for prolonged periods, preliminary recommendations may be signed on a member's behalf by the Chair where there is no substantial change from the draft version, and the draft was approved and initialed by the member. Dissents should be signed by the dissenter. If circumstances necessitate immediate mailing of the findings, the Chair may sign the dissent, where the draft dissent has been approved and initialed by its author;
- 14.20 Any new evidence obtained by the panel in the course of adjudication shall be disclosed to participating parties with time for submissions. Generally, submissions from the parties that do not include new evidence are not exchanged.

APP 15 Oral hearings General

- 15.1 Oral hearings shall be held at reasonable times and places, and be conducted in a fair and impartial manner and without discrimination to the individual. Conflict of interest provisions specified in this Manual shall be adhered to. In fixing the time and place for a hearing, due regard shall be had to the convenience and needs (personal and professional) of the appellant and representatives;
- 15.2 Appellants that have particular needs due to a disability are required to state their needs in the letter of appeal;
- 15.3 Oral hearings shall be limited to one (1) hour unless an extension is deemed necessary:
 - 15.3.1 For a fair assessment;
 - 15.3.2 For the purposes of fulfilling the provisions set forth in paragraph GI 1

“Purposes of licensing”;

15.3.3 Due to impediments or delays in the hearing;

15.3.4 For any other purpose deemed relevant by a panel;

15.4 The panel shall exercise reasonable control over the mode of hearing so as to make it as rapid and as effective as possible for the ascertainment of sufficient, relevant and reliable evidence in order to enable reasonable conclusions to be logically drawn;

Notice to the appellant

15.5 Reasonable notice (as defined by the provisions set forth in the “Time allocated for proceedings” section) in writing shall be given to the appellant. The notice shall state the:

15.5.1 Time and place for the hearing;

15.5.2 Name of each person on the panel;

15.5.3 Nature of the hearing including a reasonable description of the areas the panel shall focus on;

15.5.4 Whether supporting evidence of a particular item or category can/should be provided;

Specific matters

15.6 Oral hearings are subject to the “General Provisions” section;

15.7 The relevant procedures outlined in the “Interview” section shall apply to oral hearings. References to “interview” shall be replaced with “hearing”

Postponements

15.8 Postponements of oral hearings shall be granted only in exceptional circumstances;

15.9 The criteria for granting postponements include:

15.9.1 Lack of disclosure which is not due to delay by the party or representative in requesting it;

15.9.2 The scheduled date conflicts with a party's or representative's fixed holiday dates or work commitments established prior to setting the hearing;

15.9.3 Unavailability of the representative due to unavoidable schedule changes occurring after the setting of the hearing date;

15.9.4 Unwillingness of a representative to proceed due to inadequate time to prepare the case. This ground shall not result in postponement where the problem arises due to unreasonable delay by the party in

seeking representation;

15.9.5 Medical disability or hospitalisation;

15.9.6 Bereavement, family crisis, etc. These requests are usually received at the last minute and are decided on humanitarian and common sense grounds;

15.9.7 An unemployed appellant has just obtained work and does not want to jeopardise it by taking time off. A change in the method of appeal to a read and assess should be considered if the appellant is likely to remain unavailable for an oral hearing;

15.9.8 Transportation problems;

15.9.9 Any other criteria deemed relevant by the Board or its delegate(s);

15.10 Appeals shall be postponed by the same process specified to extend an appeal. If the postponement request is granted, the chairman of the panel shall communicate the postponement recommendation to all parties by letter or, where appropriate, by telephone or fax. A new hearing date shall be set and a new notice of hearing is sent to participating parties;

15.11 If the request is denied, the panel may decide to apply to the Board or its delegate(s) to have the appeal form changed to a read and assess appeal. If this is not deemed relevant due to the circumstances, then the panel shall inform the appellant that their options are to:

15.11.1 Attend the hearing individually or through a representative;

15.11.2 Withdraw the appeal.

Submissions pre-hearing

15.12 Where a submission or piece of evidence is received by a panel before the date of hearing, the material should be sent to all participating parties.

Late appearance

15.13 Where no postponement has been granted, and the appellant does not appear for the oral hearing, a panel shall remain in the hearing room for fifteen (15) minutes after the scheduled time of hearing. If the appellant appears during this time, the hearing shall proceed. If the appellant appears after that time, the panel may proceed with the hearing depending on the availability of member's, whether other hearings shall be delayed, and whether parties to the delayed hearing have left;

Failure to show

15.14 Where the appellant fails to appear, the panel notes this fact on the appellant's file. The appellant is invited by letter to provide reasons for the

failure to attend the hearing, and informed that, if no reasons or insufficient reasons are provided, the appeal shall be deemed abandoned;

- 15.15 Where only the appellant's representative appears, but has no instructions to proceed in the appellant's absence, the above procedure applies;
- 15.16 Where a respondent has indicated that he or she shall attend the oral hearing but is not present at the appropriate time, the panel shall proceed with the appeal. If the respondent has been unavoidably prevented from attending the hearing, the panel may allow participation by means of disclosure of the voice recording of the hearing, and allow time for submission and new evidence;

Adjournments

- 15.17 An adjournment is a discontinuation of a hearing, which is in progress. Generally, a hearing which is not concluded at the time set for the next hearing shall be adjourned to a later date;

Responsibilities of the Chair

- 15.18 The Chair is the presiding member of the panel. For an authorised officer panel the Chair is also the panel. It is therefore the Chair's responsibility to ensure that recommendations regarding procedural issues which arise during the hearing are decided in accordance with the principles of natural justice;
- 15.19 Natural justice means fair play in exercising adjudicative functions. Two of the basic elements of natural justice are the right to be heard and the rule against bias. The right to be heard means providing a fair opportunity to parties to state their case, and to correct or contradict relevant statements prejudicial to their position. This right may include:
- 15.19.1 Notice of the time and place of the hearing;
 - 15.19.2 The right to representation;
 - 15.19.3 The right to present evidence;
 - 15.19.4 The right to test adverse evidence;
 - 15.19.5 The right to know and respond to all evidence before the decision maker;
- 15.20 The rule against bias is a rule against prejudging a case. The rule includes a prohibition against both actual bias and the appearance of bias;

Procedure at the hearing

- 15.21 Although the degree of formality of a hearing may vary depending on the panel and the parties, the following format shall generally be

followed:

- 15.21.1 The Chair shall:
 - 15.21.1.2 Prior to the hearing, perform a conflict of interest and confidentiality declaration as per paragraph CI 5 “Conflict of interest and confidentiality declarations”;
 - 15.21.1.3 Begin the hearing by introducing the panel, establishing the independence of the panel, and inviting representatives to introduce themselves. The role of all the representatives should be ascertained at that time;
- 15.21.2 The Chair shall identify the decision under appeal, and, where necessary, clarify with the parties the precise issues under appeal;
- 15.21.3 The appellant or appellant’s representative shall present their case, including a brief statement of the outcome sought and grounds for the appeal, followed by the evidence;
- 15.21.4 The panel shall question the appellant or appellant’s representative on any relevant matter, followed by questions by the respondent;
- 15.21.5 The respondent shall present evidence;
- 15.21.6 The panel shall question the respondent on any relevant matter, followed by questions by the appellant or appellant’s representative;
- 15.21.7 The appellant or appellant’s representative shall make submissions based on the evidence before the panel;
- 15.21.8 The respondent shall make submissions;
- 15.21.9 The appellant may respond to the respondent’s submissions;
- 15.21.10 The Chair shall ask all parties if there are any further questions;

- 15.21.11 The Chair closes the hearing and states that a written decision shall be sent to the parties;
- 15.21.12 Once the meeting is closed, each response provided by an appellant, respondent and representatives, shall be assessed by the authorised officer panel, and in the case of a multi-person panel, by each member in turn, and then passed to the Chair. Any member may call a meeting of the panel to discuss any issue on the appeal, including the need for further assessment. The preliminary recommendation, written by one of the members, shall be reviewed and signed by the panel. The process used to finalise recommendations is provided in paragraph APP 19 “Preliminary recommendation finalisation”;
- 15.21.13 A panel shall prepare an assessment report in accordance with paragraph INV 2 “Assessment report”, of the “Assessment” section;
- 15.21.14 Panels act by simple majority vote. Any panel member may dissent from the majority recommendation. If there is no majority, the finding of the person presiding over the panel is a finding of the panel;
- 15.21.15 In the case of an authorised officer panel, the member shall assess submissions (in accordance with the “Assessment” section). The preliminary recommendation, written by the person, shall be signed. The process used to finalise recommendations is provided in paragraph APP 19 “Preliminary recommendation finalisation”;

New appeals/issues raised at a hearing

- 15.22 Occasionally an appellant may argue issues at an oral hearing relating to a licensing party decision that has not been appealed. Panels are not obliged to hear new issues;
- 15.23 Where the previously un-appealed decision was made within fourteen (14) days or any period deemed relevant by the Board or its delegate(s) of the hearing, the panel may decide to exercise jurisdiction over the appeal subject to the considerations set out below. However, where the decision is out of time for appeal purposes, the panel should inform the appellant of the procedure for applying for an extension of time. The panel may, in any event, hear evidence relating to the decision at their discretion;

- 15.24 In deciding whether to entertain the appeal or hear evidence relating to it, a panel should consider the following:
- 15.24.1 The relationship of the new appeal to the one already underway;
 - 15.24.2 The obligation to notify the respondent of the new appeal and allow participation; and
 - 15.24.3 The extra time required for hearing evidence relating to the new appeal;
- 15.25 Where an issue is raised at a hearing which has not yet been addressed by a licensing party, the panel has no jurisdiction over that matter and should so inform the parties;

Post hearing submissions

- 15.26 Parties may request time to submit new evidence that is not available at the time of the hearing. The panel may decide the request immediately, and set a time period for submission of new material, or may consider the request after the hearing. The request shall generally be refused where the panel doubts the sufficiency, relevance, and reliability of the evidence to the issue under appeal;
- 15.27 Failure to provide evidence at the hearing may result in substantial delays as all new evidence must be disclosed to other parties participating in the appeal, with time to respond, and must be reviewed and discussed by the panel;
- 15.28 Time granted by the panel for submission of evidence after the hearing shall be confirmed in writing to the party who made the request;
- 15.29 Extensions of time are decided by a majority of the panel, or the single panel member and confirmed by letter;

Disclosure of post hearing submissions

- 15.30 Participating parties are entitled to disclosure of new evidence and submissions received after the hearing, whether the material is provided by the parties or obtained by the panel. Submissions received from the parties which do not include new evidence are generally not exchanged;

APP 16 Costs

- 16.1 Depending on the circumstances of the case, the panel may order that a person:
- 16.1.1 Be reimbursed for all, some, or none of the costs incurred in an appeal

that was successful due to an error or inconsistency by one of the parties constituted for the purposes of managing the licensing process;

16.1.2 Be charged for all, some, or none of the costs incurred in an appeal that has been withdrawn or abandoned;

16.2 Where an appeal was unsuccessful, the panel may request that all, some or none of the costs incurred by the Board or its delegate(s) be charged to the appellant.

APP 17 Post findings

17.1 The Board or its delegate(s) may receive a variety of post-finding communications, including requests for clarification of findings, and complaints about the findings or procedure on an appeal;

17.2 Post-finding communications should be in writing and should be directed to the Board or its delegate(s);

17.3 The Board or its delegate(s) has the power to correct inadvertent slips, such as typographical or clerical errors without re-convening a panel;

17.4 Panels may clarify their findings, on request, where there is genuine ambiguity concerning the outcome of the appeal;

17.5 Clarification or corrections shall be issued in the form of addenda to the original findings, and shall be provided to all persons who received copies of the original findings;

17.6 Having formulated a recommendation (in accordance with the "Assessments" section), a panel may reconsider it where:

17.6.1 Procedural defects are shown which are of sufficient magnitude;

17.6.2 The panel has exceeded its jurisdiction and has rendered findings that constitute an "original" decision. Where a party alleges that a panel has exceeded its jurisdiction and has rendered findings, which constitute an "original" decision, the appropriate remedy is an appeal. Findings shall not be declared void for jurisdictional errors which do not constitute denials of natural justice;

17.6.3 A panel has failed to decide an issue that was properly before it. Where a panel has failed to decide an issue which was properly before it, the Board or its delegate(s) shall initiate the matter for completion of the appeal;

17.6.4 The Board or its delegate(s) directs;

17.7 Complaints about the outcome of an appeal i.e. findings of fact or policy shall

not result in a reconsideration of the decision. The appropriate remedy for the dissatisfied party is a further appeal;

- 17.8 Where it can be shown that any of the circumstances listed within subparagraphs (17.6.1) to (17.6.4) exist, the appeal shall be declared as void. Once a decision is declared void, it is as though no decision had been made. Under those circumstances, the Board or its delegate(s) considers that a fresh appeal shall be heard;
- 17.9 Once findings are declared void, the reconsideration of the appeal may be referred by the Board or its delegate(s) to either the original panel or to a new panel, or be heard by another person (in the case of an authorised officer panel). This decision shall be based, in part, on the potential for actual bias on the part of the original panel or person, and on whether it is still possible to constitute the original panel;
- 17.10 Where a panel rehears an appeal, the earlier appeal findings shall be disregarded;

APP 18 Conduct of panels

- 18.1 Panel members shall not divulge or allow to be divulged, except in the performance of their duties or under the authority of the Board or its delegate(s), information obtained by them or which has come to their knowledge in connection with an appeal and in respect to all internal matters of the Institute;
- 18.2 Panels shall comply with the “Conflict of Interest” section;
- 18.3 Where a conflict of interest situation arises on an appeal already set for hearing, the following options shall be considered by the Board or its delegate(s) in consultation with the panel:
 - 18.3.1 Assignment of another member to the panel to replace the member in conflict;
 - 18.3.2 Rescheduling of the hearing;
 - 18.3.3 With the consent of the parties, proceeding with the originally assigned panel;
 - 18.3.4 Any other option approved by the Board or its delegate(s);
- 18.4 Where a conflict situation is identified after a hearing, the Board or its delegate(s) may designate the remaining members of a panel as a quorum for the determination of the appeal.

APP 19 Preliminary recommendation finalisation

- 19.1 Where a preliminary recommendation is reached; after an appeal by an

authorised officer panel, he or she shall via the BOINZ Training Academy CEO:

19.1.1 Send a notice to all parties of an appeal stating the recommendation formulated and indicating that ratification or rejection shall be made by an assessment panel and subsequently approved by the Board or its delegate(s);

This process is representative only and may be followed in spirit and not to the letter.

19.1.2 Invite all parties to provide further sufficient, relevant and reliable evidence within fourteen (14) days or any period deemed relevant by the Board or its delegate(s) if the recommendation does not match their expectations and/or needs. The notice shall indicate that the parties have one (1) more opportunity to present further evidence before the matter is filed;

19.2 Where the preliminary recommendation is reached after an appeal by a multi-person panel, sub-paragraphs (19.1.1) and (19.1.2) shall apply;

19.3 Failure to respond to the “invitation” within fourteen (14) days or any period deemed relevant by the Board or its delegate(s) shall cause the preliminary recommendations to be filed with the assessment panel unaltered. If a response is filed:

19.3.1 For an authorised officer panel, the person shall:

19.3.1.1 Send a notice of receipt within two (2) days or any period deemed relevant by the Board or its delegate(s) to the parties broadly indicating the due process;

19.3.1.2 Seek submissions from other parties;

19.3.1.3 Assess the response (and submissions) in accordance with paragraph INV 1 “General nature of assessments”;

19.3.1.4 Formulate recommendations (in accordance with the “Assessments” section);

19.3.1.5 File recommendations with the assessment panel;

19.4 For a multi-person panel, a designated member shall:

19.4.1 Send a notice of receipt within two (2) days or any period deemed relevant by the Board or its delegate(s) to all parties broadly indicating the due process;

19.4.2 See sub-paragraph (19.3.1.3) above;

19.4.3 Forward the response (and submissions) to the panel for assessment, or convene the panel to assess the response (and

submissions);

19.5 A multi-person panel shall:

19.5.1 Formulate preliminary recommendations (in accordance with the “Assessments” section) either upholding or changing the original preliminary recommendations;

19.5.2 File recommendations with an assessment panel and subsequently the Board or its delegate(s);

19.6 When recommendations are approved by the Board or its delegate(s), all parties shall be notified.

APP 20 Additions and amendments

20.1 The Board or its delegate(s) maintains a systematic program of review of its standards, policies and procedures (refer to the “Review of Standards, Policies and Procedures” section) in order to ensure that it contributes to:

20.1.1 Community safety, health, and amenity, and the preservation of community confidence in the building control profession;

20.1.2 The development and protection of the building control profession;

20.1.3 The achievement of the objectives of various building acts and regulations around New Zealand;

20.2 However, where Licensed Building Control Officials or interested parties believe that all or parts of this section require additions or amendments, they are encouraged to do so by filing a submission with the Board or its delegate(s).

APP 21 Board delegation

21.1 The Board may choose to delegate its authority wholly or partly under this section.