

### **IMPORTANT INFORMATION**

Please note there are strict time limits prescribed by the *Building Regulations 2018* by which an appeal application must be filed with the Board.

If an appeal application is filed after the date by which the application must be filed, the Board does not have the power to extend the time in which the application may be filed with the Board, nor does it have jurisdiction to hear and determine the application if the appeal is filed after the date by which the appeal must be filed.

For more information on appeal periods, please refer to the following table. Please note the appeal periods listed below are derived from regulation 271 of the *Building Regulations 2018*.

<b>Section of the <i>Building Act 1993</i></b>	<b>Matter</b>	<b>Appeal Period days</b>
138	Building and occupancy permits	Within 30 days after the day the applicant is notified. (Under section 138(5) – Within 30 days after the day the reporting authority receives notification.)
138A	Direction to fix building work	Within 7 days after the person is given the written direction.
139	Temporary occupation of buildings	Within 30 days after the day the owner is notified.
142	Building notices and orders	Within 30 days after the day the notice or the order is served.
144	Building regulations	Within 30 days after the day the notification is given.

### UNDER SECTION 138, 138A, 139, 142 OR 144 OF THE *BUILDING ACT 1993*

#### 1 SITE DETAILS

##### Address

Street Address:

Suburb:

State:

P/Code:

##### Municipality

##### Use of Building

Class/classes of building (Go to: [Building classes - Victorian Building Authority](#))

Is the copy of a recent title search (less than three months) for the allotment attached?

✓

Yes	Note: If the applicant is a company, a Company Extract must also be provided and must be dated less than three months of the date of the application being lodged. Go to: <a href="#">ASIC Connect</a> .
No	You are required to attach a recent (less than three months) title search for the allotment. Go to: <a href="#">LANDATA®</a> .

#### 2 APPLICANT

##### Name

##### Company name and ACN (if applicable)

##### Address

Street Address:

Suburb:

State:

P/Code:

Phone Business hours:

Mobile:

Email:

## Who is the applicant in this application?

✓

	The applicant is the owner.
	The applicant is the purchaser of a lot under a contract of sale, which is of a kind referred to in s 9AA(1) of the <i>Sale of Land Act 1962</i> .
	The applicant is a builder appealing under s 138A of the <i>Building Act 1993</i> (the Act).
	The applicant is a prescribed reporting authority for the purposes of s 138(5) of the Act.

**If you are a representative of the applicant, please complete the Authority to Act form on page 10 of this document.** Under section 248(1) of the *Building Act 1993* (the Act), it is an offence for a person to act on behalf of an owner of a building or land for the purpose of making an application unless the person is authorised in writing to do so.

### 3 MANDATORY SERVICE OF DOCUMENTS

The Act requires that a copy of this application and the attached documents must be served on other parties, namely:

- the decision maker; and
- any other 'party concerned' (this would generally include other people with a direct and immediate interest in the outcome of the application).

Please specify which parties have been served with a copy of this application.

	Name	Company/Position title	How served: Email/post
1			
2			
3			
4			
5			

If some parties have not been served with a copy of this appeal, please outline why they have not been served.

Name	Company/Position title	Reason for not serving a copy of the appeal on the person

## 4 RESPONDENT

List the decision maker (that is; the person who made the decision which is being appealed).

**Name**

**Company name and ACN (if applicable)**

**Address**

Street Address:	
Suburb:	
State:	P/Code:
Phone Business hours:	Mobile:
Email:	

## 5 OTHER PARTIES

List any other parties in this section

**Name**

**Company name and ACN (if applicable)**

**Address**

Street Address:	
Suburb:	
State:	P/Code:
Phone Business hours:	Mobile:
Email:	

Note: If there are additional parties, please identify them and their contact details in the document containing the nature, grounds and relief that is required to be filed with this application form.

## 6 MANDATORY REQUIREMENTS

### 6A GENERAL REQUIREMENTS

You must supply a written submission which addresses the following:

✓

	<b>The Nature of the proceeding</b> What you are appealing?
	<b>The Grounds for commencing the proceeding</b> What are your reasons for the appeal?
	<b>The Relief Sought</b> What do you want the outcome to be?

Please tick to identify if the information required is included in an attachment and supplied with this appeal application.

### 6B DOCUMENTS

Attach a copy of the decision under appeal and list its details below:

Date	
From	

### 6C SECTION OF THE ACT UNDER APPEAL

Please refer to Part 10 of the *Building Act 1993* for the Building Appeals Board's jurisdiction and then tick the section and subsection of the Act under appeal (below).

#### SECTION 138 - BUILDING AND OCCUPANCY PERMITS

✓	<b>Section 138 - Subsection</b>	<b>Matter</b>
	<b>138</b>	<b>Building and Occupancy Permits</b> (You should appeal under s 144(1)(a) if it is an appeal against Council issuing a report and consent refusal in respect of a report and consent application.)
	(1)(a)	The refusal or deemed refusal of a building or occupancy permit.
	(1)(b)	The imposition of a condition on a building or occupancy permit other than a prescribed condition or a condition required by or under the Act or the regulations to be included in the permit.
	(1)(c)	The amendment or cancellation of a building or occupancy permit.
	(1)(d)	The refusal or deemed refusal of an application to amend or cancel a building or occupancy permit.

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	(1)(e)	The failure, within a reasonable time, to decide an application to amend or cancel a building or occupancy permit, if no time is prescribed within which the decision must be made.
A requirement of a reporting authority or relevant building surveyor to:		
	(2)(a)	give more information about a building or occupancy permit application.
	(2)(b)	amend a building or occupancy permit application.
If a condition of a building or occupancy permit leaves anything to be determined or approved by a person or body or confers any similar discretion on a person or body:		
	(3)(a)	the person or body's failure, within a reasonable time, or refusal to make that determination, give that approval or exercise that discretion.
	(3)(b)	that determination or approval or the exercise of that discretion.
	(5)	A prescribed reporting authority may appeal against a decision to issue a building or occupancy permit that differs from, or fails to implement, the authority's recommendations in a report on the application for the permit.

## SECTION 138A - DIRECTIONS TO FIX BUILDING WORK

✓	<b>Section of the Act</b>	<b>Matter</b>
	138A	A builder may appeal against a decision to give that builder a written direction to fix building work under Division 2 of Part 4 of the Act.

## SECTION 139 - TEMPORARY OCCUPATION OF BUILDINGS

✓	<b>Section 139 - Subsection</b>	<b>Matter</b>
	<b>139</b>	<b>Temporary occupation of buildings</b>
	(a)	The refusal of approval under Division 3 of Part 5 to occupy the building on a temporary basis.
	(b)	The imposition of a condition on an approval under Division 3 of Part 5, other than a prescribed condition or a condition required by or under the Act or the regulations to be included in the approval.
	(c)	The amendment or cancellation of an approval under Division 3 of Part 5.
	(d)	A failure within a reasonable time to decide an application to issue, amend or cancel an approval under Division 3 of Part 5.

## SECTION 142 - BUILDING NOTICES AND ORDERS

✓	<b>Section 142 - Subsection</b>	<b>Matter</b>
	<b>142(1)</b>	<b>Building Notice</b>
	(1)(a)	A decision to serve a building notice on the owner under Division 2 of Part 8 – attach the building notice.

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	(1)(b)	The failure within a reasonable time, or refusal, to cancel a building notice on being requested to do so by the owner – attach the building notice, request to cancel and refusal to cancel the building notice (if any).
	<b>142(2)</b>	<b>Building Order</b>
	(2)(a)	The making of a building order under Division 2 of Part 8 – attach the building order.
	(2)(b)	The imposition of any condition in that order – attach the building order and specify the condition in the building order.
	(2)(c)	A refusal to amend or cancel that order – attach the building order and the request to cancel or amend and the refusal to cancel the building order.
	(2)(d)	A failure, within a reasonable time, to amend or cancel that order – attach the building order and the request to amend or cancel the building order.
	(2)(e)	A requirement under Division 3 of Part 8 that the building order be fully complied with – attach the building order.
	<b>142(3)</b>	<b>Emergency Order</b>
	(3)(a)	A refusal of the municipal building surveyor to cancel an emergency order under Division 1 of Part 8 – attach the emergency order and the refusal from the municipal building surveyor.
	(3)(b)	A failure, within a reasonable time, to cancel that order – attach the emergency order and the request to cancel.

## SECTION 144 - BUILDING REGULATIONS

✓	<b>Section 144 - Subsection</b>	<b>Matter</b>
	<b>144(1)</b>	<b>Building Regulations</b>
	If the building regulations leave a matter to be determined or approved by a person or body or confer a similar discretion on a person or body (e.g. report and consent), an appeal against:	
	(1)(a)	that determination or approval or the exercise of that discretion; or
	(1)(b)	the failure, within a reasonable time, or refusal to make that determination, give that approval or exercise that discretion.
	<b>144(2)</b>	<b>Date of construction of swimming pool</b>
	(2)	A determination by the relevant council of the date of construction of the swimming pool.

## 7 FEES / PAYMENT

A separate fee is to be paid for each matter under appeal. The fees are outlined at [Forms and fees | Building Appeals Board](#).

- Always refer to the current prescribed fee schedule for appeal application costs prior to submitting your application.
- Complete the [Payment Details Form](#).

Please indicate your total fee amount payable for this application.

**Total Amount**

\$

## 8 HEARING DETAILS

Please indicate below if you prefer to have your application heard via a written submission or a hearing (in-person or remotely via videoconferencing technology).

✓	
	I would prefer the Board to make its determination based on written submissions.
	I would prefer the Board to make its determination following a hearing (in-person or remotely via videoconferencing technology).

The Board will determine whether it is appropriate to:

- refrain from having a hearing and make its determination based on the written submissions of the parties.

If there is a hearing, you will be given a minimum of seven (7) days' notice of your appeal hearing date. It is expected that you will be ready to proceed on that day. Parties to the appeal may attend and/or be represented at the hearing.

If a person provides information or documentation to the Board, the person must also provide the same information or documentation to all of the other parties to the proceeding.



## 9 FAST TRACK

If you are seeking a fast track appeal hearing, you must complete the Application for a Fast Track Appeal form, which is available at [Appeal proceedings | Building Appeals Board](#) and pay the prescribed application fee. Only a party to an appeal proceeding can apply.

## 10 APPEAL PERIODS

Tick appropriate appeal period for your application:

✓	Section of Act	Matter	Appeal Period days
	138	Building and occupancy permits	Within 30 days after the day the applicant is notified. (Under section 138(5) – Within 30 days after the day the reporting authority receives notification.)
	138A	Direction to fix building work	Within 7 days after the person is given the written direction.
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	142	Building notices and orders	Within 30 days after the day the notice or the order is served.
	144	Building regulations	Within 30 days after the day the notification is given.

## 11 DECLARATION AND SIGNATURE

I understand that, under section 248(1) of the *Building Act 1993* (the Act), it is an offence for a person to act on behalf of an owner of a building or land for the purpose of making an application unless the person is authorised in writing to do so.

I acknowledge that it is an offence to knowingly make any false or misleading statement or provide any false or misleading information to the Building Appeals Board in relation to an application (s 246 of the Act).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## AUTHORITY TO ACT FORM

### 1 OWNER/S DETAILS

**Name of first owner**

**Company Name and ACN (if applicable)**

**Address**

Street Address:	
Suburb:	
State:	Post Code:
Phone Business hours:	Mobile:
Email:	

**Name of second owner (if the appeal is also made on behalf of a second owner)**

**Company Name and ACN (if applicable)**

**Address**

Street Address:	
Suburb:	
State:	Post Code:
Phone Business hours:	Mobile:
Email:	

### 2 SITE DETAILS

**Address (please note a copy of title search/contract of sale is required to confirm ownership of the land/building)**

Street Address:	
Suburb:	
State:	Post Code:

## DECLARATION

I confirm I am the owner of the above site and I authorise the following person(s) to act on my behalf:

**Name of person or representative:** \_\_\_\_\_

I also acknowledge that it is an offence to knowingly make any false or misleading statement or provide any false or misleading information to the Building Appeals Board in relation to an application (section 246 of the *Building Act 1993*).

**SIGNATURE OF FIRST OWNER:** \_\_\_\_\_

**PRINT NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**SIGNATURE OF SECOND OWNER** \_\_\_\_\_

**(If the appeal is also made on behalf of a second person)**

**PRINT NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

## APPLICATION CHECKLIST

Use this checklist to ensure all your required documents are submitted. If all the required information is not provided at the time of submission your application may not proceed.

<b>1 SITE DETAILS</b>	✓
A copy of a recent title search (less than three months) for the allotment is attached.	<input type="checkbox"/>
<b>2 APPLICANT</b>	
If the applicant has appointed another person to act on their behalf, the 'Authority to Act' Form has been completed and signed by the applicant.	<input type="checkbox"/>
<b>3 MANDATORY SERVICE OF DOCUMENTS</b>	
A copy of this application form and supporting material that has been filed with that application has been served on the other parties.	<input type="checkbox"/>
<b>4 RESPONDENT</b>	
The details of the respondent (that is; the decision maker) are accurate.	<input type="checkbox"/>
<b>5 OTHER PARTIES</b>	
The details of the other parties are accurate.	<input type="checkbox"/>
<b>6 MANDATORY REQUIREMENTS</b>	
A written submission has been supplied addressing the Nature, Grounds and Relief sought.	<input type="checkbox"/>
A copy of the decision under appeal has been provided.	<input type="checkbox"/>
The appropriate section of the <i>Building Act 1993</i> (the Act) that your appeal relates to has been identified.	<input type="checkbox"/>
Evidence in support of your application has been provided (for example; drawings, photographs, plans or expert reports).	<input type="checkbox"/>
<b>7 FEES/PAYMENT</b>	
Total fee amount payable for this application is identified.	<input type="checkbox"/>
Payment Details Form has been completed and is attached.	<input type="checkbox"/>
<b>8 HEARING DETAILS</b>	
Preference to have your application determined via a written submission or that a hearing is conducted by the Board has been identified.	<input type="checkbox"/>

9 FAST TRACK	
If you are seeking a fast track appeal hearing, the Application for a Fast Track Appeal form is completed with any material in support of that application.	<input type="checkbox"/>
10 APPEAL PERIODS	
The appropriate appeal period has been identified.	<input type="checkbox"/>
11 DECLARATION AND SIGNATURE	
You have acknowledged that it is an offence under s 246 of the Act to knowingly make any false or misleading statement or provide any false or misleading information to the Board in relation to this appeal.	<input type="checkbox"/>