

Before the Building Practitioners Board

Appeal No. A1376

Between: Ms [Omitted] (the Appellant)
[Omitted]
Design AoP 1

And: The Registrar

In the matter of: An appeal against a decision of the Registrar of Licensed Building Practitioners to decline a Design AoP 2 Licence.

Decision of the Board under section 330(1)(a) of the Building Act 2004

Hearing Location: Auckland

Hearing Type: In Person

Hearing Date: 25 May 2023

Decision Date: 2 June 2023

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr D Fabish, LBP, Carpentry and Site AoP 2

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Licensed Building Practitioners Rules 2007 (the Rules) and the Board's Procedures for the Management of Appeals (the Appeal Procedures).

Decision:

The Board has decided, under section 335 of the Act, to reverse the decision appealed against and to **grant** a Design AoP 2 Licence.

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Summary of the Board's Appeal Decision

[1] The Appellant is granted a Design AoP 2 licence.

The Board

[2] The Board is a statutory body established under the Building Act.¹ Its functions include hearing appeals against certain decisions of the Registrar in accordance with subpart 2 of Part 4 of the Act.

Procedure on Appeal

[3] Under section 335 of the Act, an appeal proceeds by way of rehearing. On hearing an appeal, the Board may confirm, reverse, or modify the decision or action appealed against. The Board may also make any other decision or take any other action that the decision maker (the Registrar) could have made. The Board cannot review any part of a decision or action not appealed against.

The Registrar's Decision

[4] To become licensed, an applicant person must satisfy the Registrar that they meet the applicable minimum standard for the class or classes of licence applied for. ²The minimum standard is prescribed by rule 4 of the Rules. It states:

**4 MINIMUM STANDARD OF COMPETENCE FOR EACH CLASS OF
LICENCE**

¹ Section 341 of the Act.

² Refer rule 9(1)(a) of the Rules

- (1) *The minimum standard of competence for a class of licence is meeting all of the competencies set out for that class of licence in Schedule 1.*
- (2) *In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1.*

[5] Under rule 12 of the Rules, the Registrar must make a decision on the application. The Registrar's decision to grant or decline a licence must be informed by an assessor's recommendation.³

[6] On 27 October 2022, the Registrar informed the Appellant that her application had been declined. The Appellant was informed of her right to appeal the decision.

The Appeal

[7] On 7 November 2022, the Appellant filed an appeal with the Board against the Registrar's decision not to grant a Design AoP 2 licence. The Appellant was granted a lower Design AoP 1 licence.

[8] The Board's Appeals Procedures stipulate that the Registrar is to provide a report that includes all evidence used to reach the decision, including the assessors' recommendation (the Report). The Report noted the Appellant had failed to demonstrate the following competencies for the class of license applied for:

- (a) *Competency 4: Develop design and produce drawings and documentation*

[9] Under section 335(4) of the Act, the Board must not review any part of a decision or action not appealed against. On that basis, and on the basis of the Report, the matters under appeal were those noted above.

[10] The burden of proof lies with the Appellant. It is for the Appellant to provide sufficient evidence to establish, on the balance of probabilities, that she meets sufficient of the performance indicators for competency 4 to be granted a Design AoP 2 licence. If the Registrar appears at an appeal hearing,⁴ the matter proceeds using an adversarial process.

[11] The Registrar did not seek leave to appear.

The Hearing

[12] Prior to the hearing, the Appellant provided further evidence to support the appeal. This included architectural documentation for two projects, a two storey residential dwelling in [Omitted] and duplex units that formed part of a multi-unit development in [Omitted].

³ Rules 10 and 11 of the Rules

⁴ The Registrar may seek leave to appear and be heard under clause 2.9.16(a) of the appeal procedures either in person or by legal counsel.

- [13] The Appellant submitted with her appeal application references in support of her appeal from Mr [Omitted], Structural Engineer, Mr [Omitted], Registered Architect and Mr [Omitted], Licensed Building Practitioner, Design AoP 2. Mr [Omitted] attended the appeal hearing in person in support of the Appellant.
- [14] At the hearing, the Appellant made an opening overview of her qualifications and architectural work experience.
- [15] The Board questioned the Respondent as regards the performance indicators in Schedule 1 of the Rules for competency 4.
- [16] In doing, so the Board questioned the Appellant on general Building Code and NZ standards knowledge questions that apply to detailing building consent documentation.
- [17] The Board then selected the duplex units from the multi-unit development in [Omitted] that the Appellant had submitted in support of her appeal and questioned the Appellant in more detail regarding her role in the project. The Appellant explained how she developed the design and produced documentation for building consent and construction, including consultation with sub-consultants.
- [18] The Board then asked the Appellant to explain some of the more complex details within the project, the related detail throughout the documentation and how the details are to be constructed on-site.
- [19] The Board selected the second project the Appellant had submitted, the two-story residential dwelling in Albany, and questioned the Appellant on some general details within the architectural documentation.
- [20] The Board then drew on the whiteboard mock scenarios such as complex roof-to-wall junctions and enclosed balcony details and used this to question the Appellant on specific details and building code requirements.
- [21] The Appellant was supported by two witnesses:-
1. Mr [Omitted] – her supervisor - Design AoP 2 - [Omitted] - *In person*
 2. Ms [Omitted] – her industry support person - Design AoP 2 - [Omitted] - *In person*
- [22] Mr [Omitted] works with the Appellant and is her supervisor. He spoke to the Appellant's skills in producing architectural designs and documentation for building consents and construction. He noted that the Appellant was a capable architectural designer, that her level of experience and knowledge had greatly improved over the last year, and he supported her appeal of the Registrar's decision and her seeking to be granted a Design AoP 2 licence.
- [23] Ms [Omitted] is an industry colleague and support person. She has known the Appellant since university. Ms [Omitted] spoke of their very frequent interaction over architectural details and questions and the support they provide each other in

the industry. Ms [Omitted] supports the Appellant in her appeal to be granted a Design AoP 2 licence.

The Purposes of the Licensing Regime

[24] The Building (Definition of Restricted Building Work) Order 2011 (New Zealand) stipulates that design work and building work on the primary structure and external moisture-management system of a house or a small-to-medium apartment building is restricted building work. Restricted building work applies to work that is carried out or supervised under a building consent⁵.

[25] Under section 84 of the Act:

All restricted building work must be carried out or supervised by a licensed building practitioner [who is licensed] to carry out or supervise the work.

[26] Given the above provisions, a person who wishes to carry out or supervise restricted building work, other than as an owner builder, must be licensed.

[27] The introduction of the licensed building practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation⁶:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes pride in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

[28] And, as was noted by the responsible Minister during the first reading of the legislative provisions that established it:⁷

A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

[29] Within that context, it is important that the competence of those who seek to be licensed is thoroughly assessed so as to ensure that the legislative purposes of licensing are advanced, consumers are protected, and buildings are designed and constructed in a manner that makes them safe and healthy.

⁵ Refer section 401B of the Act.

⁶ Hansard volume 669: Page 16053

⁷ Hansard volume 669: Page 16053

Board's Conclusion and Reasoning

- [30] On the basis of the evidence received and having taken into consideration the purposes of the licensing regime, the Board has decided that it will modify the decision of the Registrar and grant the Appellant a Design AoP 2 licence.
- [31] In making its decision, the Board noted the Appellant, through questioning, explaining her submitted architectural documentation and mock scenarios, was able to demonstrate her knowledge of competency 4 for a Design AoP 2 licence.
- [32] The Appellant has an understanding of her current level of competence, and is cautioned to work within it. The Appellant is aware of the areas where she requires gaining more knowledge and experience. The Appellant is encouraged to seek supervision if engaged in renovation work until she gains more experience in the area of architecture. Throughout the hearing, she demonstrated that she is aware of where to seek information or whom to approach.
- [33] The Board expressed to the Appellant that she should continue her education by way of reading industry publications, attending seminars and joining industry organisations.
- [34] It was agreed at the end of the hearing that her supervisor Mr Tao and her support person Ms [Omitted] would continue to mentor Ms [Omitted] and support her as she continues to grow her knowledge within the architectural and construction industry.

Board's Order

- [35] Pursuant to s335(3) of the Act, the Board directs that the Registrar to issue a **Design AoP 2 Licence** to the Appellant as soon as is practicable.

Costs and Publication

Costs

- [36] Under section 338(4) of the Act the Board may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.
- [37] The Board has adopted the approach taken by the District Court to costs on appeal.
- [38] Based on the above, the Board's costs order is that neither party is to pay costs to the other party

Publication

- [39] Section 339 of the Act provides:

339 Orders as to publication of names

- (1) *On an appeal under this subpart, the appeal authority may, if in its opinion it is proper to do so, prohibit the publication of the name or*

particulars of the affairs of a licensed building practitioner or any other person.

- (2) *In deciding whether to make an order under subsection (1), the appeal authority must have regard to—*
- (a) *the interests of any person (including, without limitation, the privacy of any complainant); and*
 - (b) *the public interest.*
- (3) *If the appeal authority prohibits the publication of the name or particulars of the affairs of a licensed building practitioner, the Registrar must remove the name or particulars of the affairs of that licensed building practitioner from the register in relation to the matter under appeal to the extent necessary to reflect the appeal authority's prohibition on publication.*

[40] Based on the above, the Board **will not** order further publication.

Right of Appeal

[41] The right to appeal a Board decision of this type is provided for in section 330(2) of the Actⁱ.

Signed and dated this 22nd day of June 2023.



Mr M Orange
Presiding Member

ⁱ Section 330 Right of appeal

- (2) *A person may appeal to a District Court against any decision of the Board—*
- (a) *made by it on an appeal brought under subsection (1)*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*