

Before the Building Practitioners Board

Appeal No. A1378

Between: Mr [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: 13 April 2023

Decision Date: 24 April 2023

Board Members Present:

Mrs F Pearson-Green Deputy Chair, LBP, Design AoP 2 (Presiding)
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mr G Anderson, 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 confirm the decision appealed against and **not** grant a Design AoP 2 Licence.

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Summary of the Board’s Appeal Decision

[1] The Registrar’s decision is upheld. The Appellant is **not** 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 20 December 2022, the Registrar informed the Appellant that his application for a Design AOP 2 licence had been declined but he had been granted a lower Design AOP 1 licence. The Appellant was informed of his right to appeal the decision.

The Appeal

[7] On 13 February 2023, the Appellant filed an appeal with the Board against the Registrar's decision.

[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 construction 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 he meets sufficient of the performance indicators for those competencies that are being appealed to be granted a 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 two projects that he had been involved in, one a six-unit terrace house development and the second a two-story residential dwelling. The Appellant explained in his submission how he considered that he met the required competency

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.

4 for a Design AoP 2 licence referencing the project that he had supplied. His application was supported by a reference from his supervisor.

- [13] At the hearing, the Appellant summarised his architectural background, qualification, experience and current work situation.
- [14] The Appellant gave an overview of the projects he had submitted prior to the appeal and his role within those projects.
- [15] The Board questioned the Appellant as regards the performance indicators in Schedule 1 of the Rules for the competency that was appealed.
- [16] The Board then selected the terrace house project that the Appellant had submitted in support of his appeal and questioned the Appellant in more detail regarding his role in the project. The Appellant explained how he developed the design and produced documentation for building consent and construction, including consultation with sub-consultants.
- [17] 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.
- [18] The Board selected the second project the Appellant had submitted, the two-story residential dwelling and questioned the Appellant on some general details within the architectural documentation.

The Purposes of the Licensing Regime

- [19] 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.
- [20] 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.*
- [21] 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.
- [22] 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

⁵ Refer section 401B of the Act.

⁶ Hansard volume 669: Page 16053

to build it right first time and that takes prides 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.

[23] 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.

[24] 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.

Board's Conclusion and Reasoning

[25] 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 confirm the decision appealed against.

[26] In making its decision, the Board noted the Appellant has a basic level of knowledge across competency 4 but his knowledge lacked the depth to meet the required performance indicators for competency 4 for a Design AoP 2 licence.

[27] The Board also noted that the Appellant did not have the required understanding of aspects of the Building Code related to complex architectural design necessary to hold a Design AoP 2 licence.

[28] The Board recommends that the Appellant focuses on obtaining more industry experience within his Design AoP 1 licence and that he works towards gaining a greater depth of knowledge across all competencies of a Design AoP 2 licence under the supervision of another licensed practitioners licence before reapplying.

Board's Order

[29] Pursuant to s335(3) of the Act, the Board confirms the Registrar's decision appealed against.

Costs and Publication

Costs

[30] 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.

⁷ Hansard volume 669: Page 16053

[31] The Board has adopted the approach taken by the District Court to costs on appeal.

[32] Based on the above, the Board's costs order is that neither party is to pay costs to the other party.

Publication

[33] 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.*

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

[35] The Board directs that the Appellant's name be **redacted** from this decision prior to the decision being published on the Board's website

Right of Appeal

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

Signed and dated this 10th day of May 2023.



Mrs F Pearson-Green
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.*