

Before the Building Practitioners Board

Appeal No. A1434

Between: [Omitted] (the Appellant)

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 Type: On the papers

Hearing and Decision Date: 14 February 2025

Board Members:

M Orange, Chair, Barrister (Presiding)

Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2

Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor

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:

Pursuant to section 337 of the Act, the Registrar is directed to reconsider the license application.

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Summary of the Board’s Appeal Decision

[1] The Board has decided that there is insufficient evidence to determine whether the Registrar’s decision was or was not correct. On that basis, under section 337 of the Act, the Registrar is directed to reconsider the application. The Registrar is to note that the Board has issued directions that are to be complied with when reconsidering the application.

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.

The Decision being Appealed

[3] The Appellant applied for a Design Area of Practice (AoP) 2 Licence on 10 July 2024. On 9 September 2024, the Registrar informed the Appellant that his application had been declined. On 11 September 2024, the Appellant emailed the Registrar, noting an intention to appeal. An actual appeal was not filed at that time. An appeal was filed on 11 October 2024, which was outside of the period allowed for in section 331 of the Act. The Board allowed the appeal to be filed out of time.

Procedure on Appeal

[4] Under section 335 of the Act, an appeal proceeds by way of rehearing. The Board makes a decision on the evidence that was before the Registrar when the Registrar

¹ Section 341 of the Act.

made his decision. New evidence is not admitted unless it is fresh evidence that could not, without reasonable diligence, have been produced when the original licensing application was made. It must also be credible and cogent, and there must be exceptional or compelling reasons why the evidence should be admitted.

- [5] On 30 January 2025, the Appellant provided a link to design documents he stated had been submitted as part of his licence application. The Board did not consider that the documentation was fresh evidence as it was evidence that had been made available to the decision maker. On that basis, the Board admitted the evidence.
- [6] The burden of establishing that the Registrar's decision was wrong or that a different decision should be made sits with the Appellant, who has to satisfy the Board that, on the balance of probabilities, the Registrar made the wrong decision or that a different decision should have been made.
- [7] The Appellant submitted the decision was wrong because the Assessor² "criticised and diminished" the Appellant's referees and on the basis that the Assessor had misinterpreted his responses when he was interviewed.
- [8] The Board may deal with an appeal by making a decision on the papers or by holding a hearing. In this matter, the Board did not hold a hearing.

The Licensing Process

- [9] 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.³ The minimum standard is prescribed by rule 4 of the Rules. It states:

4 MINIMUM STANDARD OF COMPETENCE FOR EACH CLASS OF LICENCE

- (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.*

- [10] 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.⁴
- [11] The Assessor's recommendation was to decline the application.

² Rules 10 and 11 of the Rules

³ Refer rule 9(1)(a) of the Rules

⁴ Rules 10 and 11 of the Rules

The Purposes of the Licensing Regime

[12] 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.

[13] 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.

[14] 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.

[15] 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 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.

[16] 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.

[17] 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.

The Evidence on which the Decision was made

[18] The Registrar filed a copy of the Registrar's decision together with the evidence relied on by the Registrar when making the decision being: the original licence application, a recording of an interview with the Appellant by the Assessor and a transcript of that interview, and the Assessor's report, which included notes of referee interviews. The Registrar's decision was that the Appellant had failed to

⁵ Refer section 401B of the Act.

⁶ Hansard volume 669: Page 16053

⁷ Hansard volume 669: Page 16053

demonstrate Competencies 1, 2, 3 or 5 for a Design AoP 2 Licence and should not be granted a licence.

- [19] When reviewing the evidence, the Board also noted that the Assessor had not retained copies of design documentation used by the Appellant to support his application prior to the interview. The Appellant stated he had provided the documentation electronically but that the Assessor was not able to view what he had provided. The Appellant did note that the Assessor viewed hard copies of the design documentation during his assessment.

Consideration

- [20] The Respondent's experience was mostly gained in Italy, where he has been registered by the [Omitted], [Omitted]. The Appellant moved to [Omitted] in 2011 and continued working as an Architect Technician while attending university and gaining a Master's Degree in City Planning at the [Omitted]. He has been working in New Zealand since 2020. His work history and the projects he provided to support his application showed limited experience with design work that is restricted building work, as defined in New Zealand legislation. The Appellant provided a list of projects to support his licence application. They were not restricted building work projects. Two projects were reviewed by the Assessor during the assessment interview. They were also not restricted building work. Overall, the Board does not consider the projects provided by the Appellant to support either a Design AoP 1 or 2 licence.
- [21] To become licensed, an applicant must meet all of the competencies set out for the licence applied for. There are five competencies that must be met for a Design AoP 2 Licence. They are:

Competency 1: Comprehend and apply knowledge of the obligatory environment of the building construction industry.

Competency 2: Manage the building design process.

Competency 3: Establish design briefs and scope of work and prepare preliminary design.

Competency 4: Develop design and produce construction drawings and documentation.

Competency 5: Manage construction phase design.

- [22] Competency 5 does not apply to a Design AoP 1 Licence.
- [23] The Appellant was not granted Competency 1: Comprehend and apply knowledge of the obligatory environment of the building construction industry. The Board noted that there was no evidence of Competency 1 having been assessed in any detail. Schedule 1 of the Rules contains five specific areas known as performance indicators. They are the same for both Design AoP 1 and 2, with the difference being that

Design AoP 2 applies to both Category 1 and 2 buildings. The only one that was explored in the assessment interview was, to a limited extent, resource management. From the evidence provided, the Board was not able to see how the Assessor determined that the Appellant had not met Competency 1.

- [24] The Assessor asked questions about Competencies 2: Manage the building design process, and Competency 3: Establish design briefs and scope of work and prepare preliminary design. Schedule 1 of the Rules contains five performance indicators for Competency 2 and six for Competency 3. They are the same for both Design AoP 1 and 2. The assessment touched on some but not all of the performance indicators. As such, the Board cannot see how the Assessor reached the decision that the Appellant had not met the competencies.
- [25] It was also unclear from the Registrar's evidence how the Assessor had formed an opinion that the Appellant met Competency 4: Develop design and produce construction drawings and documentation when the design documentation had not been retained and comprehensively reviewed. Further, even if the documentation had been reviewed in hard copy, the Board cannot see how a decision could have been made when the work presented was not restricted building work.
- [26] With respect to Competency 5, as with other competencies, the Board does not consider it was thoroughly assessed and cannot see how the decision was made.

Board's Conclusion and Reasoning

- [27] On the basis of the evidence received and having taken into consideration the purposes of the licensing regime, the Board has decided that pursuant to section 337 of the Act, the license application is to be reconsidered by the Registrar.
- [28] Pursuant to section 337(2)b) of the Act, the following directions regarding the reconsideration are issued:
- (a) the Registrar is to appoint a different Assessor;
 - (b) when reconsidering the application, the Registrar should also consider whether, if a Design AoP 2 licence is not going to be granted, the Appellant meets the requirements for a Design AoP 1 licence;
 - (c) a more structured approach that deals with each Competency separately is to be used when the new Assessor interviews the Appellant; and
 - (d) design documentation relied on is to be obtained and retained.

Costs and Publication

Costs

- [29] 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.

[30] The Board has adopted the approach taken by the District Court to costs on appeal. The Registrar has not taken any steps other than providing the evidence relied on in making his decision. As such, costs need not be considered.

Publication

[31] 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.*

[32] Based on the above, the Board will not prohibit publication.

Right of Appeal

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

Signed and dated this 4th day of March 2025.



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.*