

## **Before the Building Practitioners Board**

Appeal No. A1371

Name: [Omitted] (the Appellant)

In the matter of: An appeal against a decision of the Registrar of Licensed Building Practitioners to decline a Foundations AoP 2 (concrete or timber pile foundation) Licence.

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

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Hearing Location: By audio-visual link

Hearing Type: In Person

Hearing and Decision Date: 26 July 2022

Board Members Present:

Mr C Preston, Chair (Presiding)  
Mr M Orange, Deputy Chair, Barrister  
Mrs F Pearson-Green, LBP, Design 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 grant a Foundations AoP 1 (concrete foundation walls and concrete slab-on-ground) Licence.

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## Summary of the Board’s Appeal Decision

- [1] The Appellant sought a Foundations AoP 2 (concrete or timber pile foundation) Licence. At the hearing, it was established that he had intended to apply for a Foundations AoP 1 (Concrete foundation walls and concrete slab-on-ground) Licence. The Appeal proceeded on that basis.
- [2] The Board decided that the Appellant met the applicable minimum standards to be granted a Foundations AoP 1 (Concrete foundation walls and concrete slab-on-ground) Licence.

## The Board

- [3] The Board is a statutory body established under the Building Act.<sup>1</sup> 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

- [4] 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.

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<sup>1</sup> Section 341 of the Act.

### The Registrar's Decision

[5] 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.<sup>2</sup>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.*

[6] 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.<sup>3</sup>

[7] On 24 March 2022, the Registrar informed the Appellant that his application had been declined. The Appellant was informed of his right to appeal the decision.

### The Appeal

[8] On 6 May 2022, the Appellant filed an appeal with the Board against the Registrar's decision.

[9] 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 3: Carry out planning for foundation work; and
- (b) Competency 4: Carry out foundation work.

[10] 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.

### The Hearing

[11] Prior to the hearing, the Appellant provided further evidence to support the appeal. This included detail on his qualifications and building experience in relation to the licence class sought. He also provided detail on how he considered he met the required competencies.

[12] The Board noted that the Appellant is a Chartered Professional Engineer. Under section 291(2) of the Act, a person who is registered under another enactment can

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<sup>2</sup> Refer rule 9(1)(a) of the Rules

<sup>3</sup> Rules 10 and 11 of the Rules

be treated as if they are licensed under the Building Act. Under clause 5 of the Building (Designation of Building Work Licensing Classes) Order 2010 a Chartered Professional Engineer is treated as if they were licensed in Design AoP 3 and Site AoP 3 unless their registration, licence, or other recognition under the Chartered Professional Engineers of New Zealand Act 2002 is suspended or cancelled.

- [13] The holder of a Design or a Site licence cannot carry out or supervise restricted building work other than design work under a Design licence. Accordingly, for the Appellant to carry out or supervise foundations work on residential dwellings under a building consent, he would have to hold a Foundations licence.
- [14] At the hearing, the Appellant made an opening submission in which he summarised his building background. The Appellant noted that he had overseen the installation of support piles for slab on ground foundations and the construction of the concrete foundations on top of those piles. He further noted that he is involved in the construction of retaining walls.
- [15] The Board queried the reasons why the Appellant was seeking a licence and the area of practice that he required. It was established that the Appellant had intended to apply for a concrete foundation walls and concrete slab-on-ground licence, that he was not aware that there were different areas of practice and that his appeal was simply to be granted a Foundations licence. It was noted that his appeal application referred only to a foundations licence. There was no reference to areas of practice.
- [16] With the Appellant's consent, the appeal proceeded on the basis that the area of practice being appealed was concrete foundation walls and concrete slab-on-ground.
- [17] The Board questioned the Respondent as regards the performance indicators in Schedule 1 of the Rules for those competencies that were under appeal in relation to a concrete foundation walls and concrete slab-on-ground area of practice. The Appellant answered the Board's questions with confidence and demonstrated that he had a good understanding of performance indicators in Competencies 3 and 4 and that he had carried out building work of the type under appeal.

### **The Purposes of the Licensing Regime**

- [18] 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 on applies to work that is carried out or supervised under a building consent<sup>4</sup>.
- [19] 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.*

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<sup>4</sup> Refer section 401B of the Act.

- [20] 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.
- [21] 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 of the enabling legislation<sup>5</sup>:

*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.*

- [22] And, as was noted by the responsible Minister during the first reading of the legislative provisions that established it:<sup>6</sup>

*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.*

### **Board's Conclusion and Reasoning**

- [23] 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 order that the Appellant be granted a Foundations AoP 1 (concrete foundation walls and concrete slab-on-ground) Licence.
- [24] In making the decision, the Board has exercised its powers under section 335(3)(b) to make any other decision or take any other action that the decision-maker (the Registrar) could have made. The Board noted that the Appellant's original intention was to apply for a Foundations Licence to carry out concrete slab foundations. Given this, and the evidence received, the Board decided that it was appropriate to grant a licence with the appropriate area of practice.
- [25] The Board does note that, as regards a concrete or timber pile foundation area of practice, the Registrar's decision was the correct one. The Appellant did not meet the applicable minimum standards in Competencies 3 and 4 for that area of practice.

### **Board's Order**

- [26] Pursuant to s335(3) of the Act, the Board directs that the Registrar is to issue a Foundations AoP 1 (concrete foundation walls and concrete slab-on-ground) Licence to the Appellant as soon as practicable.

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<sup>5</sup> Hansard volume 669: Page 16053

<sup>6</sup> Hansard volume 669: Page 16053

## Costs and Publication

### Costs

- [27] 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.
- [28] The Board did not consider that an award of costs was appropriate in this matter.

### Publication

- [29] 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.*

- [30] Based on the above, the Board will not order further publication.

## Right of Appeal

- [31] The right to appeal a Board decision of this type is provided for in section 330(2) of the Act<sup>i</sup>.

Signed and dated this 8<sup>th</sup> day of August 2022.



**Mr C Preston**  
Presiding Member

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<sup>i</sup> **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.*