

Before the Building Practitioners Board

Appeal No. 1397

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 Site 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 and Decision Date: 26 October 2023

Board Members Present:

Mr M Orange, Deputy Chair, Barrister Chair (Presiding)

Mr D Fabish, LBP, Carpentry and Site AOP 2

Mr P Thompson, LBP, Carpentry, 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:

The Board has decided, under section 335 of the Act, to uphold the Registrar's decision.

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Summary of the Board’s Appeal Decision

[1] The Registrar declined an application by the Appellant for her to be licensed in Site AoP 2 on the basis that she did not meet sufficient of the performance criteria in Competencies 3, 4 and 5 for a Site Licence. The Board confirmed the Registrar’s decision on the basis that the Respondent lacked the breadth of skill, knowledge and experience to be issued the licence sought.

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.

¹ Section 341 of the Act.

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.² 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.*

[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 15 August 2023, 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 8 September 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 3: Organise and manage building projects.

(b) Competency 4: Manage personnel.

(c) Competency 5: Provide technical supervision.

[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 those competencies that are being

² Refer rule 9(1)(a) of the Rules

³ Rules 10 and 11 of the Rules

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 a summary of various projects that she and her business partner, a Licensed Carpenter had undertaken.

[13] At the hearing, the Appellant made an opening submission in which she summarised her building background and the formal training she had undertaken (New Zealand Certificates in Construction Levels 4 and 5). She also made submissions on how she considered she met the required competencies.

[14] The Board questioned the Appellant as regards the performance indicators in Schedule 1 of the Rules for those competencies that were appealed. The Appellant was able to answer some but not all of the questions posed. She also outlined her on-site involvement in aspects of the building process.

The Purposes of the Licensing Regime

[15] 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.

[16] 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.

[17] 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.

[18] 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

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.

⁵ Refer section 401B of the Act.

⁶ Hansard volume 669: Page 16053

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.

- [19] 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.

- [20] 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

- [21] 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 or action appealed against.
- [22] In making its decision, the Board noted that the Appellant's experience in construction methodologies was limited and that she had not had experience in all of the aspects of the construction process. She also had knowledge gaps.
- [23] The Board was impressed with the skills that the Appellant had developed in the short period of time that she had been involved in the industry, and it encourages her to continue to develop and broaden those skills and her industry knowledge. The Board recommends that she undertake several projects from inception to completion in the role of a site practitioner under the tutelage of an experienced person.

Board's Order

- [24] Pursuant to section 335(3) of the Act, the Board confirms the Registrar's decision.

Costs and Publication

Costs

- [25] 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.
- [26] The Registrar did not appear, and based on the decision made, the Board does not see that a costs order should be made. Costs will lie where they fall.

⁷ Hansard volume 669: Page 16053

Publication

[27] The Act allows the Board to make publication orders. The Board does not see that there are any grounds or reasons to make any specific orders.

Right of Appeal

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

Signed and dated this 16th day of November 2023



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.