

Before the Building Practitioners Board

Appeal No. 1395

Between: [OMITTED], BP[OMITTED], Carpentry (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 Area of Practice 3 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: 25 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 **grant** a Site AoP 1 Licence.

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Summary of the Board’s Appeal Decision

[1] The Appellant sought a Site AoP 3 Licence. The Board decided that he should be granted a Site AoP 1 Licence on the basis that he met sufficient of the performance criteria of the specified competencies for Site AoP 1 but that he did not have sufficient experience in the construction of Category 2 and 3 buildings to be granted with a Site AoP 2 or Site AoP 3 Site 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.

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 8 August 2023, the Registrar informed the Appellant that his application had been declined. The Appellant was informed of his right to appeal the decision.

The Appeal

[7] On 25 August 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 2: Apply technical knowledge of construction methods and Practice.
- (b) Competency 3: Organise and manage building projects.
- (c) Competency 4: Manage personnel.
- (d) 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 he 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 detail on his experience in relation to the licence class sought. He also provided detail on how he considered he met the required competencies.

[13] At the hearing, the Appellant outlined that he was granted a Carpentry Licence in 2019 and has been working in the building industry in New Zealand for 11 years in residential and light commercial building work. He described the projects that he had been involved in and his role in those projects. They included a multi-unit terraced residential development and store and restaurant fit-outs.

[14] The Appellant outlined that he considered his role on building sites aligned with Site AoP 3 because he was primarily involved in management, whereas Site AoP 1 and 2 related to coordination and oversight.

[15] The Appellant called three witnesses to attest to the roles that he undertakes and to his capabilities. They spoke highly of him and of his knowledge and skill.

[16] The Board questioned the Appellant as regards the performance indicators in Schedule 1 of the Rules for those competencies that were appealed and further explored the range of buildings the Appellant had been involved in.

The Purposes of the Licensing Regime

[17] 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 consent⁵.

[18] 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.

[19] 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.

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.

- [20] 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.

- [21] 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.

- [22] 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

- [23] On the basis of the evidence received and considering the purposes of the licensing regime, the Board has decided to grant the Appellant a Site AoP 1 Licence.
- [24] The Appellant sought a Site AoP 3 Licence. Site AoP 2 and AoP 3 relate to Category 1, 2 and 3 Buildings, as defined in the Building (Designation of Building Work Licensing Classes) Order 2010. Category 3 buildings are those that exceed 10 metres in height. The Appellant's experience, however, was only in Category 1 and 2 Buildings. Further, his experience in Category 2 buildings was limited in that he had only been exposed to a limited range of common building methodologies. The Appellant also had limited experience with different contracting/client models.
- [25] Given the above factors, the Board decided that the Appellant's experience, knowledge and skills were more aligned with Site AoP 1, which covers Category 1 Buildings.
- [26] The Appellant is encouraged to continue gaining experience in various construction methodologies, contracting models and types of client engagement and to then reapply for a Site AoP 2 or Site AoP3 Licence.

⁶ Hansard volume 669: Page 16053

⁷ Hansard volume 669: Page 16053

Board's Order

[27] Pursuant to s335(3) of the Act, the Board directs that the Registrar to issue a Site AoP 1 Licence to the Appellant as soon as is practicable.

Costs and Publication

Costs

[28] 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.

[29] 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.

Publication

[30] 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

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

Signed and dated this 30th day of October 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.