



Civil and Administrative Tribunal  
New South Wales

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Case Name: Issa v Commissioner for Fair Trading

Medium Neutral Citation: [2022] NSWCATOD 159

Hearing Date(s): 5 May 2022, 17 May 2022, 1 July 2022, written submissions closed 5 August 2022

Date of Orders: 05 December 2022

Decision Date: 5 December 2022

Jurisdiction: Occupational Division

Before: D Dinnen, Senior Member

Decision: (1) The Respondent's decision to refuse the Applicant's application for a contractor licence is set aside.  
(2) In substitution for the Respondent's decision, the Applicant's application for a contractor licence is to be granted.  
(3) The Respondent is to effect the grant of the individual endorsed contractor licence to the Applicant within 14 days of publication of these reasons.

Catchwords: ADMINISTRATIVE LAW – Home building – Application for contractor licence – a “wide range of building construction work” – application of Instrument - experience which is considered relevant – Whether applicant satisfied criterion – Whether applicant is capable of doing or supervising work for which a contractor licence is required

Legislation Cited: Administrative Decisions Review Act 1997  
Civil and Administrative Tribunal Act 2013  
Home Building Act 1989  
Licensing and Registration (Uniform Procedures) Act 2002

Cases Cited:	<p>Edrees v Commissioner for Fair Trading [2021] NSWCATAD 32</p> <p>Kocoski v Department of Services, Technology and Administration [2011] NSWADT 135</p> <p>Locking v Department of Finance and Services [2013] NSWADT 239</p> <p>Price v Commissioner for Fair Trading [2020] NSWCATOD 93</p> <p>Vitogiannis v Commissioner for Fair Trading, Department of Customer Service [2020] NSWCATOD 157</p> <p>Wilmot v Commissioner for Fair Trading [2021] NSWCATOD 43</p>
Texts Cited:	<p>Other Cited: Instrument – ‘Qualification Requirements for an endorsed contractor licence or supervisor certificate for general building work’ dated 31 March 2017</p>
Category:	Principal judgment
Parties:	<p>Adnan Akram Issa (Applicant)</p> <p>Commissioner for Fair Trading (Respondent)</p>
Representation:	<p>Applicant (Self Represented)</p> <p>Department of Customer Service Legal (Respondent)</p>
File Number(s):	2022/00045676
Publication Restriction:	Nil

## REASONS FOR DECISION

- 1 Adnan Akram Issa, also known as Eddie Issa (the Applicant) has worked as a building project manager for Andersal Pty Ltd (Andersal) since around 1990. Andersal is a Sydney-based remedial and rectification construction company. On 26 July 2021 the Applicant lodged an application with the Department of Customer Service for an individual endorsed contractor licence in the category of “general building work” under the *Home Building Act 1989* (the Act). That application was refused by a delegate of the Commissioner for Fair Trading (the Respondent) on 1 February 2022, on the basis that the Applicant did not meet the experience requirements for the issue of the licence according to s 33D(1)(b) of the Act.

- 2 The Applicant made an application for review of the Respondent's decision in this Tribunal on 16 February 2022, and the matter proceeded to hearing before me on 5 May 2022, and the oral hearing continued on 17 May 2022 and 1 July 2022. Following the conclusion of the hearing on 1 July 2022 I made orders for the parties to file and serve written submissions, with the final submissions being received by the Tribunal registry on 5 August 2022, and this decision being reserved thereafter.

### **Legal Principles**

- 3 The Tribunal has jurisdiction to review the Commissioner's refusal of the Applicant's application for a contractor licence under s 83B(1) of the Act, s 9 of the *Administrative Decisions Review Act 1997* (NSW) (ADR Act) and s 30 of the *Civil and Administrative Tribunal Act 2013* (NSW) (CAT Act).
- 4 In determining an application for an administrative review of an administratively reviewable decision, the Tribunal is to decide what the correct and preferable decision is having regard to the material before it: s 63(1) of the ADR Act.
- 5 A contractor licence authorises the holder to contract to do certain residential building work: s 21 of the Act; and an endorsed contractor licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do: s 28(1) of the Act.
- 6 The Respondent (referred to in the Act as the "Secretary": see Schedule 1 of the Act) must refuse an application for a contractor licence in certain circumstances. Section 20 requires:

20 Issue of contractor licences

- (1) The Secretary must refuse an application for a contractor licence if:

.....

(a1) the Secretary is not satisfied as to the matters of which the Secretary is required to be satisfied by sections 33B and 33C, ...

.....

- (2) The Secretary may, by notice published in the Gazette, specify qualifications and experience, or additional standards or other requirements, required to be held or met by an applicant for a contractor licence.

- 3) The Secretary must refuse an application for a contractor licence if—

- (a) the Secretary is not satisfied that any such requirement would be met were the contractor licence to be issued, or
- (b) the Secretary is not satisfied with the applicant's proposed arrangements for supervision of the work which the contractor licence will authorise the applicant to contract to do, or
- (c) the Secretary is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work of a kind proposed to be authorised by the contractor licence.

....

(5) A decision of the Secretary relating to the specification of qualifications and experience, or additional standards or other requirements under subsection (2) cannot be reviewed by the Tribunal in an application for an administrative review made under this or any other Act.

....

- 7 The Respondent did not rely upon s 33B of the Act, contending instead the Applicant's application for a licence should be refused on the basis of s 33C(1)(b)(i), read with s 33D(1).
- 8 Section 33C(1)(b)(i) of the Act provides that a contractor licence must not be issued unless the Secretary is satisfied that the applicant, if also applying for an endorsement of the contractor licence to show that it is the equivalent of a supervisor certificate, satisfies the requirements of section 33D for the issue of a supervisor certificate to the applicant. There was no dispute that s 33C(1)(b)(i) applies in the circumstances of this case and that, as a result, s 33D applies.
- 9 Section 33C(1)(b)(i) of the Act requires that a contractor licence must not be issued unless the Secretary is satisfied that "*the applicant, if also applying for an endorsement of the contractor licence to show that it is the equivalent of a supervisor certificate, satisfies the requirements of section 33D for the issue of a supervisor certificate to the applicant*". Section 33D(1)(b) of the Act relevantly provides:

33D Additional requirements for obtaining supervisor and tradesperson certificates

(1) A supervisor or tradesperson certificate must not be issued unless the Secretary is satisfied that the applicant:

- (a) ....

(b) has had experience of such a kind and for such a period as the Secretary considers would enable the applicant to do, or to supervise, the work for which the certificate is required,

....

10 The Respondent accepted that the Applicant has appropriate qualifications and has passed relevant examinations or tests as required by s 33D(1)(a), and I am satisfied of the same. The issue in this case is whether the Tribunal could be satisfied that the Applicant “has had experience of such a kind and for such a period as the Secretary considers would enable the applicant to do, or to supervise, the work for which the certificate is required” within s 33D(1)(b) of the Act.

11 Pursuant to Clause 159, Part 27, Schedule 4 (Savings and transitional provisions) of the Act, the Respondent relies on the definition of “experience” contained in a notice which was published in the Government Gazette in April 2017, titled *‘Instrument – Qualification Requirements for an endorsed contractor licence or supervisor certificate for general building work’* dated 31 March 2017 (the Instrument). The Instrument provides that, for a contractor licence to be issued, an Applicant must demonstrate:

- (1) a minimum of two years’ relevant industry experience;
- (2) in a wide-range of building construction work;
- (3) where the majority of that experience was obtained within 10 years of the date on which the application was made.

12 The Instrument provides the following definitions:

“**Experience**” means experience gained by the applicant as:

- (a) an employee of; or
- (b) a holder of a supervisor certificate and as a nominated supervisor for the contractor licence held by; or =
- (c) a holder of an endorsed contractor licence contracted to; or
- (d) a holder of a supervisor certificate in the capacity of a nominated supervisor for a contractor licence held by an individual, partnership or corporation contracted to;

the holder of a contractor licence authorising the holder to do the class of residential building work in which experience was gained (“the Work”), where the applicant, during the relevant period, was:

- supervised and directed in the doing of the Work by the holder of an endorsed contractor licence or supervisor

certificate authorising its holder to supervise the Work, and this is verified in the Relevant Application Form; and

- received Remuneration in accordance with law for the Work which the applicant carried out;

....”

**“Relevant Application Form”** means the relevant application form for the Licence or Certificate that is being applied for, which is published on the NSW Fair Trading website, including the required attachments to that form. (Note – Applications are to be made in accordance with section 12 of the *Licensing and Registration (Uniform Procedures) Act 2002*)

- 13 Column 2 of Table A to Schedule 1 requires:

At least two years’ relevant industry Experience in a wide range of building construction work, where the majority of that Experience was obtained within 10 years of the date on which the application is made.

- 14 Section 12 of the *Licensing and Registration (Uniform Procedures) Act 2002* relevantly requires:

12 Procedure for making applications

(1) An application may be made in writing or by means of electronic communication.

(2) ....

(3) ....

(4) If made in writing, an application—

(a) must contain such information as is required by the relevant application form or as is otherwise required by or under the relevant licensing legislation, and

.....

(5) If made by means of electronic communication, an application—

(a) must contain such information as is required by the relevant application form or as is otherwise required by or under the relevant licensing legislation, and

.....

- 15 Schedule 1 of the Act provides that:

“residential building work” means any work involved in, or involved in co-ordinating or supervising any work involved in—

(a) the construction of a dwelling, or

(b) the making of alterations or additions to a dwelling, or

(c) the repairing, renovation, decoration or protective treatment of a dwelling.

## Consideration

- 16 The Respondent contended that whilst the Applicant had extensive experience in remedial or refurbishment work, he had not demonstrated that he has the requisite “wide range of building construction work” as prescribed under the Instrument. According to the Respondent, this had to include a “new build”, being the construction of a new dwelling. Remedial and refurbishment construction works were insufficient because, according to the Respondent:

Remediation work does not involve all the steps to be followed and carried out in a sequential order to enable the construction of a house. The Respondent submits that there are works carried out in the construction of new residential building which are not involved in the remediation works for which the Applicant claims experience. These excluded works include coordination of building set out with surveyor & formworker; coordination with plumber on laying of underground sewer & storm line; scheduling of sequential inspections of work in compliance with viewpoints & holdpoints requirements for sequential works and others.

- 17 The Respondent relied on the Tribunal’s decisions in *Locking v Department of Finance and Services* [2013] NSWADT 239 (Locking) and *Price v Commissioner for Fair Trading* [2020] NSWCATOD 93 (Price) in support of this submission. In Locking the Tribunal affirmed the decision of the Respondent to refuse the Applicant's application for a contractor licence in the category of "general building work" as Mr Locking had not satisfied a minimum of two years relevant industry experience in “a wide range of building construction work”, because Mr Locking’s experience had been limited to carpentry and joinery work:

17. This experience in carpentry and joinery work is not the equivalent of "a wide range of building construction work" as required by the Instrument. Carpentry and joinery work is a sub-category of building. It is only one aspect of the work required to be done in order to complete the construction of a residential dwelling.

18. A building contractor has the overall responsibility for a site and must be able to supervise all of the trades required to complete any type of dwelling. Additionally, a builder must be able to determine that all trades have complied with all standards and requirements. There are many gaps in Mr Locking's trade supervisory experience and therefore his understanding of certain trades. Those trades include flooring, bricklaying, stonemasonry, wet plastering, painting, decorating, general concreting, tiling, demolishing, fencing, glazing and waterproofing.

19. A building contractor is also able to contract with the public, and must therefore be able to negotiate a contract, quote for a project and co-ordinate the trades to be able to complete the project on time and within budget. He or

she must also be able to negotiate and discuss the jobs with council and private certifiers to ensure that the work is passed fit when appropriate.

- 18 In Price, the Tribunal found that Mr Price's experience related "primarily to work in renovating bathrooms with some work in kitchens" (at [60]) and held that "it cannot be said that Mr Price undertook a wide range of building construction work on projects over the preceding 10 years" (at [62]). At [70] to [71] the Tribunal stated:

70 Mr Price argued that his 37 years in the building industry provided sufficient experience for him to obtain a builders licence. He held a builders licence between 2002 to 2009 and has held other licences in the building industry. He argued that he is familiar with the building code and the standards. He contended that a carpenter is able to supervise all of the trades and is experienced in all the fundamental structural principles. He stated that he had supervised other tradespersons. Mr Buttigieg stated that this occurred when he himself left a site to pick something up. Mr Price argued that the principles attached to building or renovating a bathroom or kitchen are the same as those in relation to other aspects of building a house. However, the Tribunal notes that the Instrument focuses on demonstration of the Applicant's experience in work. That is the evidence needs to show that the Applicant has had experience in undertaking the kind of work expected of the contractor. This is not the same as understanding the principles. In this respect, the Tribunal notes there are different principles that apply in the areas of plumbing, tiling, waterproofing, carpentry and painting. Each of these callings has its own applicable skills.

71 Mr Price has not demonstrated that he has the breadth of experience required for a licence in the category of general building work. There is a lack of evidence that Mr Price has, as required by the Instrument, a minimum of two years relevant industry experience in a wide range of construction work – the majority of which has been obtained in the 10 years prior to application. In the circumstances of this case, I see no reason to depart from the requirements of this aspect of the Instrument. I do not consider that application of the policy in this case on the basis of the evidence put before the Tribunal would produce an unjust decision. On the evidence before me I cannot be satisfied that Mr Price's experience is such that, although he may not strictly meet the requirements of the Instrument, he has otherwise demonstrated with evidence that he has extensive relevant experience which would qualify him to be granted a contractor licence in the category of general building work. No clear evidence was placed before the Tribunal that Mr Price had undertaken this role in the 10 years prior to the lodging of the application, or outside of this timeframe.

- 19 The Applicant provided the following written submissions in addition to his extensive oral evidence at hearing:

I believe that the Instrument to which [the Respondent] refers has been interpreted to my disadvantage and is focused on a slice of the building industry and rather than the whole.



I have submitted substantial evidence in varying aspects on varying projects, that cover the requirements outlined in the instrument, just not on one single project to which [the Respondent] is singularly focused.

In my 30 plus years' experience in the industry, a builder is not present on a site 100% of the time to supervise a project, there are other roles that perform said tasks, such as Site Supervisors and Project Managers.

The Builders ultimate responsibility is to sign off on all tasks of the project, not to micromanage each trade on site.

Taking a large property developer such as Masterton Homes as an example, they have hundreds of ongoing simultaneous projects, there is a builder's license in play, however the said owner of the licence is not present on every or perhaps any build.

It is the Project Managers and Site Supervisors, that perform the required tasks. Similarly with my company Andersal, the owner of the license Mr Henk Van den Heuval is not present on every project. He has confidence in my abilities to act on his behalf, because of my extensive skills and experience in addition to my extensive qualifications.

I see this as a credit to my abilities, as opposed to a deficit as per [the Respondent's] submission.

Furthermore, I believe Remedial work, that my company focusses on, goes a step or rather several steps further than the new build trades as per [the Respondent's] focus. Remedial work resolves issues caused by the original builders, it requires a higher level of skill to ensure issues do not reoccur, it involves at times starting afresh at other times repairs to the original. Remedial work adheres to the code (where the original builders can often cut corners and deliver the minimum Australia standard. I and of course Andersal go several steps further to diagnose and resolve issues over and beyond the building code and to this end we are able to guaranty the work performed for 10 Years where the standard is 6 years.

It is my opinion that existing and new builders, should be required to have similar experience to me before they are granted a license. So that the impact of their mistakes or decisions that lead to defects do not eventuate. Thus, mitigating the downstream impact on customers and the litigation that can then ensue.

Based on the evidence provided, the Tribunal should now be satisfied that I have the requisite experience as required in the Instrument.

I believe the Tribunal should affirm the decision to grant the application for a licence in the category of "General Building Work".

- 20 When asked by the Tribunal, Mr Van Den Heuvel, the Applicant's nominated supervisor, expressed a similar opinion in relation to the Respondent's contentions:

Q. But the respondent's main criticism of Mr Issa's experience as far as the Tribunal can see it, and I'm sure Ms Robosa will add anything or correct me if I'm wrong, is that the experience put forward by Mr Issa doesn't demonstrate that he has the ability or has previously supervised or been involved in new building works, that he has only been involved in specialised remedial works.

The respondent's position is that that doesn't constitute a broad range of building construction work.

A. Well, I tend to find that a little confusing in that we have to do all components of building work, but it may be at various stages and various components of a building from the footings right through to the roof, including internal waterproofing, cosmetic painting, tilings, waterproofing, the whole, the whole thing. So, it's - although it's not from go to whoa building a property or a development, it is every single part of that component has been done at some stage.

Q. Is there anything in a--

A. The remedial industry, you have to be a builder to do remedial work. It's a huge industry out there that just doesn't do new builds. It just does - it fixes up other people's problems, defects in buildings and age related problems. So, what we do is we know what goes wrong with buildings, so we come in and repair them or upgrade them.

Q. Is there anything that goes on in a new build that you wouldn't do or supervise or have input into in remedial works?

A. I can't think of anything, except for maybe a kitchen, installing a kitchen.

- 21 There is nothing in the Act, the Instrument, or the authorities relied on by the Respondent which requires an applicant to include in that experience a "new residential building", or that an applicant be able to demonstrate experience in "all the steps to be followed and carried out in a sequential order to enable the construction of a house", as contended by the Respondent. The proposition that "a wide range of building construction work" has to include new buildings has been put forward by the Respondent and rejected in this Tribunal on a number of occasions now. In *Vitogiannis v Commissioner for Fair Trading, Department of Customer Service* [2020] NSWCATOD 157, I said at [45]:

The Instrument requires the Applicant to have undertaken a 'wide range of building construction work'. The Respondent's submissions are to the effect that a "wide range" should include new buildings and structural works, or at the very least, extensions or renovations to current dwellings which are significant enough to warrant development approvals and/or home warranty insurance, and demonstrably change the aerial view of a dwelling. I disagree. The requirements in the Instrument are deliberately broad, and I agree with the Applicant's submission that the Instrument does not specify what weighting and value to be ascribed to 'structural experience' as opposed to refurbishment or renovation work for residential dwellings, or how that would be calculated. I also agree with the Applicant's submission that the process and methodology of construction may be more complex for an existing building, renovation or refurbishment than in simply erecting a new building.

- 22 In the context of a similar submission by the Respondent in *Wilmot v Commissioner for Fair Trading* [2021] NSWCATOD 43 the Tribunal held at [90]:

I do not accept Mr Coss's submission that the circumstance that the work Mr Wilmot has done for Preservation Technologies is remedial means that he does not have the broad experience required. The term "residential building work" is defined to include "the making of alterations or additions to a dwelling" and "the repairing, renovation, decoration or protective treatment of a dwelling." That is, altering, adding to, repairing and renovating a dwelling is just as much residential building work as is constructing a dwelling.

- 23 The Instrument requires the Applicant to demonstrate a "wide range" of experience. This does not mean the Applicant is required to demonstrate experience in every single possible trade associated with building construction work. Taking into account the Tribunal's previous comments in Locking (as set out above), the Applicant should be able to demonstrate that he is *capable* of supervising every type of associated trade, but this can be done without specific past experience of having done so, especially where the Applicant is able to demonstrate his knowledge of applicable standards and requirements across a broad range of trades.
- 24 In submissions the Respondent also sought to confine the relevant experience which could be considered by the Tribunal to "residential building work", arguing that experience on commercial construction projects or on "non-habitable spaces" within residential construction projects, such as carparks, were excluded from the relevant experience. I disagree. Whilst the Act is only concerned with residential construction, experience in commercial construction can be relevant to an applicant's experience. The Instrument does not expressly require the work the subject of the application to be "residential building work" (as defined in the Act), and the Tribunal has previously held that commercial work should not be excluded from the consideration of an applicant's relevant experience under the Act, and that to do so would be applying the Instrument inflexibly. This same issue was considered by the Tribunal in *Wilmot v Commissioner for Fair Trading* [2021] NSWCATOD 43 where it found, at [98] to [99]:

The Instrument is a policy which cannot displace the words of the statute. There is a potential inconsistency between the Instrument and the *Home Building Act*, insofar as the Instrument detracts attention from the questions of whether an applicant's experience would enable the applicant to do, or to supervise, the work for which a supervisor certificate is required. For example, the policy of completely disregarding any experience gained on commercial buildings appears unreasonable, given that such experience may enable a person to do, or to supervise, the work for which a supervisor certificate is

required. The work may be identical in nature to work done in a residential dwelling.

I accept that there may be particular kinds of experience which can only be gained in a dwelling (or by doing residential building work). If this is the case, the respondent has not identified what it is. Mr Coss did submit that Mr Wilmot had not had experience laying a slab, constructing brickwork from the beginning, or constructing the initial walls. It does not appear that this work would be unique to residential building work. In any event, I am satisfied that he has the necessary experience to do all of these things.

25 I agree with the Tribunal's conclusion in *Wilmot* at [100], that:

Even if there is work which is unique to residential work, that does not mean that work done on a commercial site has no value in terms of an applicant's experience. It may simply mean that a person with experience working on commercial sites would need to demonstrate some residential experience as well.

26 I can find no basis for the Respondent's submission that construction work done on a residential building in "non-habitable areas", such as carparks, should be excluded from consideration of an Applicant's experience under the Instrument, and reject that submission accordingly.

27 Senior Member Isenberg observed in *Edrees v Commissioner for Fair Trading* [2021] NSWCATAD 32 at [56], that the statutory test "requires an analysis of the relevant experience on a case by case basis." As will be seen from the evidence discussed below, it is my view that the Applicant has demonstrated that he does have the breadth of experience which is required by the Act and the Instrument, and which has been previously considered by the Tribunal in such cases as *Price* and *Locking*, being in at least two years' experience in a wide range of construction work, within the last ten years.

### *The Evidence*

28 The Applicant provided Referee Statements from Mr Henk Gregory Van Den Heuvel dated:

- (1) 22 June 2021 with Applicant's On Site Building Experience Form for sites at 5-7 The Esplanade, Elizabeth Bay (January 2018 – December 2019 – 24 months) and Cement Australia Glebe Island, 1 Sommerville Road Glebe Island (December 2019 to 22 June 2021– 21 months);
- (2) 24 November 2021 with Applicant's On Site Building Experience Form for sites at 5-7 The Esplanade, Elizabeth Bay (January 2018 – December 2019 – 24 months) and 104 Greenacre Rd, Greenacre (December 2003 to May 2021, 36 months);

- (3) 17 January 2022 with Applicant's On Site Building Experience Form for sites at 5-7 The Esplanade, Elizabeth Bay (January 2018 – December 2019 – 24 months) and 286 Arden St, Coogee (June 2017 to February 2018 – 8 months). Attached to this Statement is an undated reference letter which listed, among other projects, residential sites claimed to have been project managed and supervised by the Applicant; and
  - (4) 10 February 2022 with Applicant's On Site Building Experience Form for sites at 8 Finch Ave, East Ryde (1 September 2011 – 23 August 2013 – 24 months & 20 days) and 31-33 Albany St, Crows Nest (August 2019 – 30 November 2019 – 3 months).
- 29 The Applicant also provided reference letters from Richard Verco, Managing Director of Andersal; Ricardo Cardoso, Project Manager of Andersal; Tom Mackay, Director, Diagnostech Pty Ltd; Anthony Fowler, Director, Acumen Australia Consulting Engineers Pty Ltd; Charlie Thomas, Associate, RHM Consultants; Daniel Green, Remedial Engineer of Landlay; Daniel Ticconi, Mattioli Strata Manager NSW; John Beaini, Director of Academy Construction Builder, holder of Licence No. 40213 in the category of "Builder"; Brett Finucane, Market Field Manager-Refurbishment, Sika Australia Pty Ltd; Harvey Welman, General Construction & Remedial Specialist of Ardex Australia Pty Limited; and Michael Herder, Operations Manager of Projex Group Pty Ltd.
- 30 The Applicant and Mr Van Den Heuvel both gave evidence at hearing and were cross examined. The Applicant provided the Tribunal with two large folders containing his evidence and submissions in relation to the building projects he relied on for the purpose of demonstrating his experience.

### *Supervision*

- 31 Mr Van Den Heuvel is the General Manager of Andersal and holds a qualified supervisor licence. His substantial role at Andersal included supervising the foreman project managers, ensuring compliance with AS4801, tendering, client liaison, supervising and supporting the project manager, consultancy work, business management, business promotion, supervising administration and backroom office staff. Approximately 75% of the time he was in the office and the rest of the time he was "out seeing clients" or "dropping into the bigger sites to see how they're going". Andersal was involved in multiple projects at the same time.

32 Mr Van Den Heuvel sits on the board of the Australian Concrete Repair and Remedial Building Association and was recently awarded an OAM for services to the construction industry. He gave extensive evidence at hearing and was cross examined. He made appropriate concessions, including the fact that he had not supervised the Applicant's home construction despite that project being included in a Referee Statement signed by him, and that he had not authored the letter ascribed to him which was included in the Applicant's correspondence to the Respondent of 17 January 2022, but had reviewed it and initialled the pages as agreeing to its contents. His evidence was consistent, clear and informative and was of great assistance to the Tribunal in understanding the nature and breadth of work undertaken by the Applicant as an employee of Andersal. I accept his evidence.

33 Mr Van Den Heuvel provided the Referee Statements for the Applicant's application and was the Applicant's nominated supervisor. In those Referee Statements he certified that he supervised the Applicant carrying out a wide range of building work for the time periods specifically declared, and that this work was while the Applicant was an employee and where Mr Van Den Heuvel held a qualified supervisors certificate. Mr Van Den Heuvel certified that the Applicant had experience and demonstrated:

... a level of knowledge and experience in a wide range of building work which would allow him to competently perform the roles and responsibilities of a licence builder which includes and is not limited to, applying building codes and standards to the construction process in accordance with the building code, dealing effectively with subcontractors, consumers and other parties, reading and interpreting plans and specifications, planning building or construction projects and work, organising site surveys and set out procedures to building and construction projects, applying structural principles to residential constructions, conducting onsite supervision of building and construction projects, applying legal requirements to building and construction projects and managing occupational health and safety in a building and construction workplace.

34 The Respondent submitted that Mr Van Den Heuvel provide very little detail as to the nature and scope of the work performed during the verified periods, and that it was implausible that the Applicant was under the supervision and direction of Mr Van Den Heuvel as required by the Instrument, because Mr Van Den Heuvel gave evidence at the hearing that he did not closely supervise Mr Issa; that "Day to day supervision was all Mr Issa"; and that "Mr Issa ran the

show". The Respondent referred to the following exchange in cross examination as evidence that Mr Van Den Heuvel did not adequately supervise the Applicant:

Q. It's the case then, isn't it, that you did not and have not directly instructed Mr Issa what to do at those sites at the work?

A. He's got a lot of autonomy on those sites, yes. He would run them from the beginning to the end.

Q. He would run them from beginning to the end without so much supervision from you, is that correct?

A. Yeah, given he's been doing the work for 30 years, I would hope he could do that.

Q. You have given--

A. He has delegated authority.

Q. To work at those sites unsupervised?

A. Yeah, yeah - well, yes.

.....

35 In my view this is an unfair characterisation of the evidence given by Mr Van Den Heuvel at hearing, who specifically clarified in relation to his supervision of the Applicant:

... as I understand the evidence you've given, your supervision of Mr Issa was limited because you basically trusted him to do the job, he's been doing it for 30 years and he knew what he was doing. Is that a fair way of putting it?

A. Yes. I think so, yes.

Q. How do you know then on the limited amount of time that you spent physically supervising him onsite or physically supervising what was going on onsite, how do you know that he was doing the job correctly?

A. Two things, there's no complaint from the client. We have documented what needs doing. There's a consulting engineer as well that would also visit the site. So, there's two - there's an independent assessor of what's going on. We operate through photographs and we have Zoom meetings every Thursday from 9 o'clock through to about 10 or 10.30 where we would sit down with our director and our staff and go through what jobs are running, what we're up to, what problems we have and just talk through every single job that's running there. The work that we do, as I said, Mr Issa has been doing it for 30 years and he knows - I used to spend more and more time out in the field, but I have a lot of confidence in Mr Issa.

Q. After the completion of a project, there are certifications and walk through's and so on, aren't there?

A. That's right, yes.

Q. If there was a problem, I guess it would be picked up?

A. The client would be straight onto us. We just don't get clients ringing back with defects. The work is finished--

Q. What about the trades, what about the management of the trades? How do you know Mr Issa is managing the various trades onsite well?

A. Because he's onsite there with them. The trades that we use, we use all the time. So, we've got very good long-term relationships with these subcontractors. They know what we want. We only use the best materials and systems because basically, where the client is asking us to come in pull everything apart and put it back to the way it looked at extraordinary amount of money, so we don't cut costs because we're not going back in there. We've got scaffold up. It would cost us a fortune if we didn't do it right and as I said, we don't have any warranty issues. You know, big storm, we didn't get call backs to say, "By the way, your job is leaking." None of that. I know we're heading in the right direction.

Q. In terms of Mr Issa's roles and responsibilities, that aligns with what you've just said or--

A. Yes. Look, we're in good communication, as I said, through meetings every week we have on through Zoom and larger projects and more risky projects, I put my head in there a lot more. Sometimes these projects just go for a week or two, they barely get started and then they're finished.

Q. Do you review the documentation that Mr Issa completes?

A. Absolutely. Mr Issa CCs me in on all correspondence going out to clients. I see everything that comes in and goes out.

Q. You said that you look at photos of the sites?

A. Photos and before a quote goes out or communication goes out, it comes to me. I'll adjust it, look at it, quasi-legal sense and suggest additions and Mr Issa would then correct them and then send them out.

Q. On a daily basis or a weekly basis, how often are you in contact with Mr Issa?

A. Daily.

36 Based on this evidence given by Mr Van Den Heuvel I reject the Respondent's submission that the Applicant was not supervised or directed by Mr Van Den Heuvel, on a general basis or on a daily basis. I will separately address each of the building sites nominated by the Applicant as demonstrating his experience below, noting that periods of experience overlap.

37 Mr Van den Heuvel was also asked what the Applicant's roles and responsibilities were with Andersal. His response:

Look, Eddie's role hasn't - Mr Issa's role hasn't changed that much in the last two years, except that's obviously less - well, working from home with COVID obviously and hardly anyone comes into the office these days, except myself. So, the role goes back, it's similar to the last ten years, so I can talk about that.



Mr Issa would generally commence - we, we might win the project, Mr Issa has tendered and priced it himself or usually I tender and price the projects and then the job would be handed over to him to communicate with the client, residential. It might be the strata manager or it might be a delegation onsite committee about when works would start, where it was going to go, the access methods that we propose to using. He would then arrange with the various subcontractors that we might need them. Might be access scaffolding people, abseiling, tiling, painting, plumbers, electricians, tiling, waterproofing, the whole roles there. He would then supervise that work directly onsite. He may have half a dozen jobs running at any one time, so he would visit those everyday making sure that the specifications are being adhered to and the products are being applied, the timing of the jobs, safety, the work method statements, the inductions are done for the subcontractors.

He may also have some trainees at times. We've employed them underneath him that might stay onsite as eyes and ears for Mr Issa. He would also then do the client liaison there, keep them up to date. Do the programming. He would also contact and be in contact with a consultant or a structural engineer if one is involved in these works, which they often are because we do a lot of tendering through the consultants in the industry. He would, as I said, update the programs, he would then get involved in the invoicing there to be sent out. If there's any problems onsite, there's communications and then wrap up the job at the end.

- 38 When asked if there were any works undertaken by Andersal at the nominated sites that the Applicant wasn't able to supervise or get involved in, Mr Van Den Heuvel confirmed:

A. No, he's directly involved in all of them and onsite. Spent a considerable time onsite.

- 39 Mr Van Den Heuvel also stated:

A. So, his role would be foreman and project manager. The complete package. So, onsite supervision and all the safety paperwork and the client liaison. It's everything, except for - even Eddie does get involved in some labour side of the project as well if needed, but it's everything. It's controlling the subcontractors--

...

A. Yeah, complete control of the subcontractors, the coordination of them, the safety of them and client liaison, be the residents, the consulting engineer or the strata manager. It's quite difficult in that often these buildings are habited, so we've got to work with people that are living in the buildings at the same time as pulling them apart and rebuilding them. We're in fact rebuilding an existing structure and everything from the footings all the way to the roof. We could do any of that.

Q. Is it the project manager's responsibility to determine whether the trades that that person is supervising have complied with the relevant standards and requirements?

A. Correct. Yes, definitely.

Q. Mr Issa does that?

A. Yes, definitely.

Q. Is that in relation to every site that he's on?

A. Every site. To the building code and to the specifications that we're also given. So, often we would come back to the consultant and say that, "What you're asking us to do won't conform to the building code," and we look for modifications, particularly in the waterproofing area where people, even consultants, don't have a grip on what the Australian Standards require.

A. He would look at those plans and talk to the consulting engineer and discuss the shortfalls in his/her design and how we can go about modifying it and if that can't be achieved, that's passed onto the client and they make an informed decision and write to us and confirm that they accept that it may not comply to the Australian Standards because of an existing condition.

Q. Is that something that Mr Issa does on his own or is it something that he's instructed to do by you or other members of the company informing him on those standards?

A. He has done it on his own in the past and currently, but also he would come and talk about maybe what solutions, alternatives may get us across the line and how to approach the client about that. It's a collaborative thing because at the end of the day, it's our risk there in making sure things conform.

- 40 Whilst the Referee Statements and On Site Building Experience forms signed by Mr Van den Heuvel did, as the Respondent submitted, contain very little detail, his evidence at hearing made abundantly clear that he had supervised the Applicant in his role as Project Manager at Andersal for years, and he vouched for the Applicant's capabilities and broad range of building construction work experience.

#### *Evidence of Building Projects*

- 41 The Referee Statement initially provided by the Applicant to the Respondent in support of his application included projects at 5-7 the Esplanade, Elizabeth Bay from January 2018 to December 2019, and at Glebe Island from December 2019 to June 2021 as evidence of his experience in the years immediately preceding his application, which was lodged in July 2021 (1st Referee Statement). On 17 November 2021 the Respondent issued the Applicant a Notice under section 14(1) of the *Licensing and Registration (Uniform Procedures) Act 2002* seeking additional information including further evidence in support of his claim for "Practical Residential Building Experience", on the basis that the Glebe island site:

...is a commercial site. Please note that commercial sites are not considered as residential building work under the Home Building Act. The experience claimed at this site therefore cannot be considered.

- 42 On 24 November 2021, the Applicant forwarded documents including a further Referee Statement dated 24 November 2021 signed by Mr Van Den Heuvel which included projects at 5-7 The Esplanade Elizabeth Bay from January 2018 to December 2019, and 104 Greenacre Rd Greenacre from December 2003 to May 2021 (2nd Referee Statement).
- 43 On 20 December 2021, the licence application was refused under the provisions of section 33C(1)(b)(i) and section 33D(1)(b) of the Act because the Applicant has not satisfied the practical experience requirements. The Applicant requested an internal review on 17 January 2022, including another Referee Statement signed by Mr Van Den Heuvel which included projects at 5-7 The Esplanade Elizabeth Bay from January 2018 to December 2019, and 286 Arden Street Coogee from June 2017 to February 2018 (3rd Referee Statement).
- 44 On 1 February 2022 the Respondent affirmed its original decision to refuse the licence application on the ground that the Applicant had not satisfied the requisite experience. On 12 February 2022 the Applicant forwarded additional documents to the Respondent, including a Referee Statement dated 10 February 2022 signed by Mr Van den Heuvel which included projects at 8 Finch Avenue East Ryde from 1 September 2011 to 23 August 2013, and 31-33 Albany Street Crows Nest from August 2019 to 30 November 2019 (4th Referee Statement).
- 45 In correspondence attached to the request for Internal review the Applicant included a 20 page written reference purporting to be from Mr Van Den Heuvel which included lists of over 40 residential building projects and over 40 commercial building projects which the Applicant had managed and supervised in the preceding 10 years. In evidence at hearing Mr Van den Heuvel explained that the Applicant had prepared the document which he reviewed and “made sure they were our projects and I remembered them, so checked through, read it, and then initialled them”.
- 46 The following building projects were the ones relied on by the Applicant and addressed by the Respondent at hearing.

## **5 – 7 The Esplanade, Elizabeth Bay**

- 47 The Applicant claimed experience at 5-7 The Esplanade, Elizabeth Bay from January 2018 to December 2019, a period of 24 months, under the supervision of Mr Van Den Heuvel. The Applicant was the Project Manager on site, and the works included:

Remedial work to entire facades, concrete slabs, footing, concrete stairs, balconies alterations, brickwork, balcony balustrades alterations, window repairs and replacement, painting, waterproofing, tiling, pool fencing, plumbing, electrical alterations, new gates, gates etc.

- 48 The project overview stated:

Remedial and upgrade works to the carpark section at the building complex including:

Scaffolding and swinging stages access around the facades

Cranes used to lift the concrete pre cast panels in 3 stages

The demolition and removal of old tiles, handrails, and the pre cast panels

Concrete repair works to the entire building including the carparks

New waterproofing membrane etc

New tiles at balconies and BBQ

The rectifications to the old timber windows, doors and sashes etc

Painting to all existing painted surfaces

The installation of the new aluminium powder coated balustrade

Other remedial works

Pressure cleaning to the entire facades

Rubber stopper installation

- 49 The Respondent submitted that the Contract Agreement supplied for this site confirmed the work as “Façade Rectification Works”, which was remedial work and minor/non-structural work, not requiring Council approval, and therefore not equivalent to “a wide range of building construction work”. The respondent further submitted that the reference failed to provide detailed description of the Applicant’s roles and responsibilities on the project, and there was no evidence of the Applicant having supervised experience in structural construction work and determining whether other trades have complied with relevant standards and requirements as required under the BCA.

50 In evidence the Applicant explained that the works on this project were valued at \$2.24 million, included 28 payment claims which he signed off on, 56 variations to the contract, and at least 39 project meetings. He said that there were at least 80 people on site throughout the project, and every single trade he could think of was involved. He spent about 20 - 25 hours per week on site during the project, which overlapped with another project being conducted by Andersal at Wyagand Street in Neutral Bay (which is detailed further below).

51 Mr Van Den Heuvel explained that the project did not require council approval because it was an “exempt development”:

No, it was exempt development. There were structural components from it and there was an architect involved and as well as a structural engineer consultant also, which they dealt with council. I believe because the handrails had changed, it had to go back to council for approval on that, but we weren't involved in obtaining any basics or DA paperwork. That would be done by the consultant and the architect. So, there'd be waterproofing, which is a structural component. The handrails are a structural component and concrete repairs would be structural.

... Well, it is remedial but there's obviously window replacements, painting, tiling, which is non-structural but there's also structural. There's both.

52 The Applicant provided the Tribunal with copies of the contract, home warranty insurance certificate, detailed project program, spreadsheet of Andersal progress invoices, summary of project costs, photo of the construction works, project meeting minutes, completion warranty certificate, and the project maintenance manual. The documentation demonstrates at least 22 separate subcontracting trade companies were involved in the project, including waterproofing, painting, scaffolding and cranes, chemical testing, plastering, concreting, tiling, electric, metalworks, carpentry and cleaning.

53 Mr Van den Heuvel stated that his involvement in this project was:

I'd go to the site on a - initially every week when it first started up and then we started having monthly meetings with the consulting engineer, so I'd restrict myself to those, especially because there was a quite a few delays on the project with having to go back to council to get handrail design changed because of a fault that we had picked up that they weren't going to be structurally sound, so the consultant had to change all the design.

... Day to day supervision was all Mr Issa.

54 Having viewed the photographs and documentation supplied and accepting the Applicant and Mr Van Den Heuvel's evidence, I accept the Applicant's

submission that this project demonstrates his involvement in a wide range of building construction work in the period claimed, and his ability to supervise each of the trades relevant to the project. I also find that Mr Van Den Heuvel adequately supervised the Applicant in relation to this project. For the purposes of calculating the Applicant's experience within the meaning of the Act, the evidence demonstrates that the Applicant spent at least 20 hours on site and then another 10 hours in the office each week in relation to this project, which is not quite full time, over a 24 month period. I am satisfied that the evidence demonstrates the Applicant is capable of supervising a wide range of building construction work.

#### **Cement Australia Glebe Island**

- 55 The Applicant claimed experience at 1 Sommerville Road, Glebe Island, for a period of 21 months from December 2019 to 22 June 2021, under the supervision of Mr Van Den Heuvel. This project for Cement Australia involved construction of non-habitable structures such as plant rooms, offices, and a store room, and included new footings, columns, reinforced concrete loadbearing walls, and installation of carbon fibre to existing columns. The Applicant's role was the Estimator and Project Manager for Andersal.
- 56 The Applicant and Mr Van den Heuvel both gave evidence to the effect that Andersal was engaged in more commercial works since the onset of the Covid 19 Pandemic because of the downturn and restrictions on residential building construction in 2020 and 2021. It seems unfair in those circumstances to reject entirely any experience on commercial projects in licence applications including the pandemic period. The Respondent, however, confirmed that there were no considerations given for the construction halts or downturn due to the pandemic for licence applicants in relation to the experience requirements of the Act.
- 57 The Respondent submitted that because this was a commercial site, it was not relevant work experience for the purpose of the Applicant's application. Unfortunately, the Tribunal accepted this submission at hearing and as a result heard no specific evidence from the Applicant or Mr Van Den Heuvel in relation to this project.

58 In my view the Applicant's evidence of commercial construction in the relevant period is relevant. The project documents provided by the Applicant for the Cement Australia Glebe Island project identify it as being primarily concerned with structural works to strengthen the iconic silos on Glebe Island, involving excavation, extensive formwork, scaffolding, electrical works and plumbing. The photos supplied demonstrate that the Applicant, as Project Manager, was present on site and signed some of the site handover documents, which were also formally signed by Mr Van den Heuvel. The project milestones document identifies with specificity which tasks were being completed each day during the project, from site mobilisation starting on 25 November 2019 to final clean up, issuing of occupancy certificates and completion documents in June 2021.

59 The project documentation demonstrates that the Applicant is capable of supervising a wide range of building construction work, including structural works. Considering the Applicant's involvement in other projects during this time period, it is difficult to ascertain how many hours per week were dedicated by him to this particular project, but I accept his evidence and that of Mr Van Den Heuvel that he was working full time under the supervision of Mr Van den Heuvel from December 2019 to June 2021, as stated by him in the referee statement.

**104 Greenacre Rd, Greenacre**

60 The Applicant claimed experience of 36 months in the period from December 2003 to May 2021 at 104 Greenacre Rd, Greenacre. This involved "alteration and first floor addition to existing dwelling".

61 This is the Applicant's residential address and was not a project undertaken by the Applicant in his role as an employee of Andersal. In evidence Mr Van Den Heuvel confirmed that he had not actually supervised the works undertaken by the Applicant at his own home, but was aware of them, and had therefore initialled and signed the documents in which the Applicant had included this project as relevant experience.

62 The respondent submitted that the Tribunal should not accept this project as evidence of the Applicant's experience under the Act and Instrument, referring to the Tribunal's findings in *Kocoski v Department of Services, Technology and*

*Administration* [2011] NSWADT 135, at [40] and [41] which effectively stated that experience gained whilst working as an owner builder, or as a family member working alongside an owner builder, would not ordinarily be considered industry experience. I accept the Respondent's submission that the Applicant's involvement in renovations to his own residence, in circumstances where he was not supervised and was not acting in his role as an employee of Andersal, is not relevant experience for the purpose of the Act and the Instrument.

**286 Arden Street, Coogee**

- 63 The Applicant claimed experience of 8 months from June 2017 to February 2018 at 286 Arden Street Coogee, under the supervision of Mr Van Den Heuvel. The Applicant was the Project Manager on site and this project involved:

new roofs, studio room upstairs, laundries, parapets, doors, windows, gutters, tiling, plumbing, waterproofing gyprock, painting, scaffolding, electrical, etc.

- 64 Although the Applicant claimed this project went from June 2017 to February 2018 on the On Site Building Experience form, the Contract is dated December 2017, the reference from Andersal dated 6 January 2022 states the project went from January 2018 to October 2018, the 13 January 2022 letter from Landlay, remedial engineer consultants to the project, states "project undertaken in 2018" and the letter initialled by Mr Van Den Heuvel dates the project from December 2017 to July 2018. The practical completion report prepared by Landlay for the project is dated 19 November 2018 and certified the date of practical completion as 30 October 2018. In the circumstances I find that the project at 286 Arden Street Coogee went from December 2017, the date of the Contract, to 30 October 2018, the date of practical completion. The Applicant's involvement in the project was at a minimum 7 months' experience, based on the various dates provided.
- 65 The contract for 286 Arden Street Coogee included remedial building works to timber rooftop structures, top floor balcony rooftops, parapet and dividing walls, upgrading timber staircase, upgrading roof drainage, waterproofing, installing new balustrades and trafficable rooftop system.



- 66 The respondent submitted that HBCF Insurance Certificates described the work as “Replacement of roof membrane, painting & roof laundry cladding”, and this was remedial building works which is not equivalent to “a wide range of building construction work”. The respondent also submitted that the reference failed to provide detailed description of the roles and responsibilities of the Applicant on the project.
- 67 In evidence the Applicant explained that the project involved the full replacement of the roof membrane and roof upgrade of an apartment block. The block had 14 residential units over 4 storeys and there were 11 rooms under the roof, and a studio room on the roof, to which access was required. The Applicant’s role as project manager and site supervisor for this project included:
- ...budget, communications, programming, organise trade, invoicing, inspections, reporting, documenting all the work involve up to completion.
- 68 The Applicant stated that they had found termite damage and asbestos once the project was started, so he engaged additional specialist trades to deal with those issues, including the removal of asbestos. The project included full replacement to the roof tops, new sliding doors, new plumbing to the roof, internal cladding, gyprock, electricals, new handrails, carpentry work, and insulation. During this project he supervised the carpentry work, asbestos removals, roofers, abseilers to do corrective works to the power pit and plumbing, plumbers, electricians, bricklayers for the stitching, metalworkers for the handrails and balustrades, glazing, flashing, tilers, waterproofers, have painters, and some minor concreting work. He was onsite between 10 and 20 hours per week for this project, plus some additional after hours work in the office. Between 30 and 40 people worked on the project over its course.
- 69 The Applicant explained the works were exempted by Randwick Council from DA approval, dependent on engineer approval, because they were maintaining the roof height and paint colours in accordance with the building’s heritage listing.
- 70 In addition to Mr Van Den Heuvel’s Referee Statement for this project, the Applicant provided to the Tribunal references from Landlay and Andersal.

- 71 Mr Van Den Heuvel confirmed the Applicant's evidence in relation to this project:

Righto. There's wall cladding. There's metal roofing. There's external waterproofing for the roof areas. There's timberwork, electrical, roof plumbing, painting, drainage, insulation installation, balustrade replacement. Stairs were built for different levels on the thing there. Glass was put in to the building. Yeah, so - and yeah, and painting.

Q. You'd consider that a broad range of construction work?

A. I would think so, yes. That's pretty much every trade.

- 72 Mr Van den Heuvel confirmed that the Applicant's involvement on the project amounted to 10 to 20 hours per week on site and 'after hours' in the office over the course of the project, which involved management of 30 to 40 people of various trades.

- 73 Having viewed the photographs and documentation supplied and accepting the Applicant and Mr Van Den Heuvel's evidence, I accept the Applicant's submission that this project demonstrates his involvement in a wide range of building construction work, and his ability to supervise each of the trades relevant to the project. I also find that Mr Van Den Heuvel adequately supervised the Applicant in relation to this project. For the purposes of calculating the Applicant's experience within the meaning of the Act, the evidence demonstrates that the Applicant spent between 10 and 20 hours on site and in the office each week in relation to this project over at least a 7 month period in 2018. I am satisfied that the evidence demonstrates the Applicant is capable of supervising a wide range of building construction work.

**8 Finch Ave, East Ryde**

- 74 The Applicant claimed experience of 24 months and 20 days from 1 Sept 2011 to 23 Aug 2013 on a project at 8 Finch Ave, East Ryde, involving "Demo, new build, and alterations to existing" as a Project Manager and site supervisor.
- 75 The On Site Building Experience form indicated that the building work was carried out under "Owner Builder. Andersal Pty Ltd as a Principle builder". The Respondent submitted that the Applicant's experience on this building project should not be counted for the purpose of his experience under the Act and Instrument because according to the contract the works were for a non-habitable space, being a "new carport and associated work", there was a

limited scope of work according to Schedule 3 of the Contract, the Compliance certificate dated December 2014 confirmed the work carried as being handrails to stairs/balcony and Garage roof cladding, there was No evidence of HBCF Insurance taken out by Andersal for this site, it was unclear who took out the Owner Builder Permit for the work at this site for the verified period, there were no detailed description of the roles and responsibilities of the Applicant on the project, it was unclear who supervised the Applicant in carrying out the work, the scope of work contracted is not wide ranging and work relating to the non-habitable space carport falls under 'Carpentry' work, and it was unlikely to take 24 months & 20 days to carry out the limited scope of work specified in the contract.

76 In evidence the Applicant explained that:

Yeah, it's a new build from zero and the meantime it's alteration and additional to the existing build. So, we, we built a new driveway to the property, then in the meantime we have to modify the existing, alteration to the existing, put a hole through the property to create a new landing between the internal levels from the living and the ground floor to the inside of the property, install the new doors, new handrails, landscape and one of unique walkway into the property, which is mean inside the property, internal work, on the glass flooring. It's part of the contract.

77 Mr Van den Heuvel clarified in his evidence that he did not supervise the Applicant on this project:

I do recall the job, I don't really - can't remember I think another engineer of ours was involved in that who doesn't work for the company now, Jacques, who's the chief engineer for Sydney Harbour Tunnels. So, I wasn't - I know of it, but I really didn't have any direct oversight of it.

...

I know, I know Eddie - Mr Issa worked on it, but I am not right across the details on that project.

...

I know it had to do with glazing and—

...

New carport and stuff, but that's about it.

78 Mr Van den Heuvel was clarified that although in the Referee Statement documents he had approved the Applicant as being the project manager and site supervisor of that particular job, he didn't have personal involvement in the

project and would not be able to confirm Mr Issa's role on the project or what he did during that time.

- 79 In the circumstances, I accept the Respondent's submission that the Applicant's experience at 8 Finch St East Ryde cannot be considered relevant as it was not supervised by Mr Van Den Heuvel.

**31-33 Albany St, Crows Nest**

- 80 The Applicant claimed experience from August 2019 to November 2019, a period of 3 months, at 31-33 Albany Street Crows Nest as the Project Manager and Site Supervisor, under the supervision of Mr Van Den Heuvel. This period overlapped with part of the period claimed for the project at 5-7 The Esplanade, Elizabeth Bay.
- 81 The Respondent submitted that the Applicant's experience at 31-33 Albany Street, Crows Nest should not be considered relevant because it involved construction of non-habitable structures, the Builder in control of the site was Kane Constructions Pty Ltd, not Andersal Pty Ltd, and the type of work carried out was concreting a drive way ramp, which fell under the limited category of concreting and was not equivalent to "a wide range of building construction work". The Respondent also submitted that the reference failed to provide detailed description of the roles and responsibilities of the Applicant on the project, and there was no evidence of the Applicant having supervised experience in structural construction work and determining whether other trades have complied with relevant standards and requirements as required under the Act.
- 82 The Applicant provided the Tribunal with a copy of the tender documents dated 2 August 2019 provided by Andersal to the Contracts Administrator at Kane Constructions Pty Ltd. The tender documents describe the project as "remedial repairs to the ground floor carpark ramp". In evidence the Applicant explained that the ramp was a "new build", not remedial repairs, but that:
- ... we call our quotes remedial. This is part of our company policy to have the quote goes under remedial, but it should be modification, but the policy as per the director, he want it as a remedial
- 83 The Applicant explained that Andersal were contracted to do a specific task, being the building of a new ground floor carpark ramp, by the builders which

were engaged on a much larger scale project of remedial works, demolition and building at 31-33 Albany Street Crows Nest.

- 84 Mr Van Den Heuvel stated that he attended the site at 31-33 Albany Street Crows Nest on only one or two occasions, at the beginning and end of the project, and left the day to day running of the project to the Applicant.
- 85 I reject the Respondent's submission that the experience on this project should not be considered relevant because it involved construction of non-habitable structures. Even if "commercial building construction" was excluded by the Instrument, this project involved constructions works on a residential building. However, I accept that the Applicant did not provide any detailed evidence of how many hours per week he was on site at this project in the claimed time period, or which specific trades were involved. In the circumstances I find that this project, on its own, is insufficient to demonstrate the Applicant's involvement in a wide range of building construction work in the period August to November 2019. However, I consider that the Applicant's evidence of his experience on this project is still relevant, because he was involved on this project at the same time that he was involved on the project at 5-7 The Esplanade Elizabeth Bay. Combined with the project at Elizabeth Bay it demonstrates his ability to manage multiple trades and multiple building construction projects on residential buildings.

#### **15 Wyagdon Street, Neutral Bay**

- 86 The Applicant claimed experience from January 2019 to December 2019, a period of 12 months under the supervision of Mr Van Den Heuvel. The Applicant was the Project Manager and Site Supervisor on site, and the works included structural upper and lower carpark strengthening and repair works on an eight storey building. This project overlapped with the project at 5-7 The Esplanade, Elizabeth Bay.
- 87 The Respondent submitted that the Applicant's experience on this project should not be considered relevant because the contract agreement was for the car park suspended slab strengthening and remediation work, which is "commercial work and a non-habitable space", the work involved was not equivalent to "a wide range of building construction work", and the reference

failed to provide detailed description of the roles and responsibilities of the Applicant on the project.

- 88 The Applicant gave evidence that his role included site establishment, communications with the consultants and building body corporate, arranging trades, complete all documentation in relation to the project, site inspections, managing trades. The project was valued at just under \$1M and there were at least 17 variations to the contract. He estimated there were about ten different trades working on the project included electricians, concreters, plumbers, steel fixers, waterproofers and bricklayers, and at least 40 individual workers involved. He explained his role:

I carried out the work. I understand now. So, just so I make it clear in every project in this company, if I'm involved in the estimating, some of it I do, and the majority of it now, I do in the last five years. All my projects, I estimate them, as stated with my builder, by Henk van den Heuvel in early statement to the Tribunal during the phone conversation. I do one, estimate the projects, run the project, do all the communication, organise tradies, manage budget, do the OH&S, communicate with the client and the residents, certifying all the document with the tradies, get all the certificate related to the project as required per the Department of Fair Trading for the project or the structure engineers. I manage all that from finish to start. We don't see my general manager or any of the management here involved. I run it from beginning to end. All they what we sit here in the office talk about money, is this project make money or not with the management. So I do the whole entire thing.

I'll have people to help me here. A labourer here to clean up, tidy up or a site supervisor as in make sure this task is really important, we make sure this will happen, then like, he's my eyes onsite. Just take a few photos, flick it to me so I can document it. I'll organise everything with the consultant, structure engineers, invoicing, the whole lot. That's my task in the company.

- 89 The Applicant stated that as the project manager and site supervisor, normally he did around 20 hours onsite and then additional hours in the office:

When I finish work, I get home about 3.30 when construction finish and I work up to 7, 8 o'clock every night to catch up with paperwork.

- 90 The Applicant provided the Tribunal with copies of the contract signed 26 February 2019, warranties signed by Mr Van den Heuvel dated 16 July 2019 and 10 January 2020, various product warranties from Sika Australia, Dulux, and Firmstone dated between August 2019 and December 2019, structural certification dated 26 April 2019, insurance certificate, and the Project Maintenance Manual. The documentation supports my finding that the project involved hydro demolition to remove spalling concrete and steel preparation,

steel priming, concrete patch work, crack repairs using epoxy resin, carbon fibre slab strengthening, carbon fibre strength testing, pressure cleaning, painting, new pipes and gutter installation, new stainless steel stormwater and floor waste installation, asphalt installation, rubber stopper installation, laundry footing and stainless steel beam installation. Mr Van Den Heuvel confirmed the Applicant's evidence and gave further insight into the Applicant's role on this project:

Okay, so in the lead up to that it would be consultation with the - meeting the client onsite and the structural engineer on what works were to be done. So, a program would be put forward to the client and what access we require, which part of the car parks we needed sole occupancy and the handover dates for that. Mr Issa then looked at alternative design works for that structural upgrading of the car park from two and a half KPA to five KPA car park and we proposed changing some of the carbon fibre from top and bottom to being on the soffit only so that we didn't affect the wearing surface and--

...

the design of that. So, we - Mr Issa improved the design with communication with the consulting engineer. We had a third party engineer redesign that and submit it to the consulting engineer and then we looked at starting to go with - Mr Issa did, organised a hydrodemolition crew to come in. They were unsuccessful in their attempts to do what we wanted, so we resorted back to normal manual labour contractors in to do the demolition work where it's required and the carbon fibre wrapping. Then he's consulted and organised the painters that came in, the epoxy flooring people and made sure that the slip resistance was right, because it was a car park that had oils and outdoors and waters and we had to get that right. The falls, he then talked to the consultant about the lack of plumbing and drainage on the car park area. They organised new routing of the stormwater system between the two of them. Again, kept the client informed, reprogrammed the job. I think - and obviously looked after the - made sure that the invoicing went out, it got approved by the consultant and we still finished the job on time.

...

Plus, supervision everyday onsite.

91 Mr Van den Heuvel stated he had closer supervision of the Applicant on this project than on the 5-7 The Esplanade Elizabeth Bay project, which was running concurrently, because of the structural design changes involved. I accept Mr Van den Heuvel's evidence.

92 I reject the Respondent's submission that the experience on this project should not be considered relevant because it involved construction of non-habitable space. As discussed above, even if "commercial building construction" was excluded by the Instrument, this project involved constructions works on a

residential building. The evidence demonstrates that the Applicant capably supervised multiple trades on this project, under the supervision and approval of Mr Van Den Heuvel. Having viewed the photographs and documentation supplied and accepting the Applicant and Mr Van Den Heuvel's evidence, I accept the Applicant's submission that this project demonstrates his involvement in a wide range of building construction work in the period claimed, and his ability to supervise each of the trades relevant to the project. I also find that Mr Van Den Heuvel adequately supervised the Applicant in relation to this project.

- 93 For the purposes of calculating the Applicant's experience on this project within the meaning of the Act, the evidence demonstrates that the Applicant spent at least 20 hours on site per week over a 12 month period. His additional hours in the office after the construction work finished for the day would have likely, on the evidence, been also used for other construction projects he was managing. This project coincided with the 5-7 The Esplanade Elizabeth Bay project, so is considered supportive of the Applicant's claim of full time work over the 24 month period he was involved in that project, rather than additional days of experience beyond that 24 month period. Combined with the project at Elizabeth Bay it demonstrates his ability to manage multiple trades and multiple building construction projects on residential buildings. I am satisfied that the evidence of this project further demonstrates the Applicant is capable of supervising a wide range of building construction work.

#### *Other references*

- 94 In addition to the Referee statements and associated documents signed by Mr Van Den Heuvel, including On Site Building Experience forms, the Applicant provided the Tribunal with several references from industry professionals describing and praising his capabilities in project management for building construction, including the management of trades.
- 95 These references were provided by the Applicant to the Respondent in January 2022 to support his request for Internal Review:
- (1) Richard Verco, Managing Director of Andersal stated that the Applicant:



...has vast practical knowledge and experience in the construction industry, on both residential and commercial projects, on buildings with new and old construction methods.

Eddie has an exceptional record of OHS compliance, and always manages his projects to my expectations, on budget, safe, and with a high standard of quality. Eddie Issa's communication skills are exceptional. He communicates well with his colleagues, higher management, engineers, consultant engineers, builders, contractors, strata managers, subcontractors, tradesmen, council staff and clients.

He has also been responsible for training subcontractors and trainees in all aspects of the job.

A few recently completed residential projects are listed here:

- 15 Wyagdon Street Neutral Bay from early January 2019 to late December 2019. Over \$1.2 million.
- 5 The Esplanade Elizabeth Bay from early June 2018 till late December 2019. Over \$2.4 million.
- 286 Arden Street Coogee January 2018 till October 2018. Over \$800k.
- Plus, hundreds of other residential projects.

- (2) Ricardo Cardoso, Project Manager at Andersal, stated that he was a Civil Engineer employed by Andersal since 2011 and was the Applicant's work colleague. He said the Applicant:

... is the company's most experienced and knowledgeable employee. He has successfully completed a very large number of projects requiring excellence in engineering design, tendering, programming, contract management, analysis of structural and architectural drawings, writing specifications, liaising with all project related parties and OHS. In addition, Eddie has the invaluable ability to manually carry out site tasks he asks of subcontractors not limited to carpentry, roofing, electrical, concreting, plumbing and waterproofing.

Some notable projects Eddie has completed follow:

Residential

- 15 Wyagdon Street Neutral Bay from early January 2019 to late December 2019. Over \$1.2 million.
- 5 The Esplanade Elizabeth Bay from early June 2018 till late December 2019. Over \$2.4 million.
- 286 Arden Street Coogee January 2018 till October 2018. Over \$800k.
- 30 Folkstone Parade Botany. 2016 – 2017 1.2 million.
- Copper Park Road 2012-2013. Over 2.5 million.

...

I have no doubt Eddie has the knowledge, experience and level of responsibility required to hold a NSW Building Licence ...

- (3) Tom Mackay is the director of Diagnostech, remedial building consultants. He provided a reference which stated the Applicant:

...is a very experienced and proficient project manager. He has successfully completed many projects requiring high level project management in construction. Eddie has skills in construction as well as executing complex remedial engineering projects.

Eddie's construction skills include tendering, programming, contract management, comprehension of structural and architectural drawings, specifications preparation, liaising with all project related stakeholders, and WH&S management. Eddie has vast experience in the management and coordination of numerous subcontract disciplines.

I worked with Eddie on two major projects (15 Wyagdon St Neutral Bay and 5 Esplanade Elizabeth Bay) with project values totalling approximately \$4 million, and a number of smaller projects. During these projects Eddie successfully managed and executed works including structural strengthening, structural alterations, concreting, carpentry, window and door installations, repairs to building facades, concrete repairs, brickwork and flashings, waterproofing, tiling, plumbing, electrical, fencing/ balustrading, scaffolding, painting.

Based on my experience with Eddie, I would not hesitate to vouch for Eddie's competency in general construction...

- (4) Anthony Fowler, Director and Manager of Acumen Engineering, provided a reference stating:

Eddie is one of my preferred contractors to whom I regularly request tenders on rectification projects. I respect Eddie's expertise on tendering, rectification scoping of works, material- product choice, coordination of contractors, realisation of structural concerns, building regulation items, and supervision of works. Myself and my clients have been very satisfied with Eddie's work and regularly request that he tenders on new projects.

Major projects I have been involved with Eddie include:

- 23 Yarranabbe Road, Darling Point from early October 2021- late December 2021. The construction of new reinforced concrete retaining wall, 5m in heights, brick/cavity flashing work, waterproofing, tiling, plumbing & guttering Value \$70,000
- 5 Percy street Auburn. From August 2021 till late October 2021. Demolition to the existing driveway and the construction of new reinforced concrete driveway over 1000m<sup>2</sup>. Value \$250,000
- 106 Hall Street Bondi beach, from early June 2021 till September 2021. The construction of new footing, new brick wall, plumbing, guttering, landscaping, waterproofing, tiling and concrete repairs. Value \$70,000
- 40 Bent street neutral Bay. From early November 2020 till end December 2020. The construction of new reinforced concrete retaining wall in heights, brick/cavity flashing work, waterproofing, plumbing, excavation Value \$40,000
- 2 Alexander street Coogee early July 2019 - late August 2019. Demolition, construction new reinforced concrete stairs and handrails, brick work, and lintel replacement Value \$30,000

- 486 New Hacking Road, Sylvania. From early June 2018 to August 2018. Concrete repairs, drainage system, waterproofing, landscaping  
Value \$60,000
- Kirrawee Retirement housing. From early May 2018 to late May 2018. Lintel replacements and brick work, concrete repairs and painting.  
Value \$40,000
- 14 The Esplanade Rockdale March 2017 – April 2017. New plumbing, new sewer lining underground, concrete repairs, guttering etc. Value \$60,000
- 2 Joe Street Neutral Bay. November 2016 till December 2016. Demolition work to the concrete stairs and rebuild to the new code.  
Value \$25,000
- Current tender about to commence Grosvenor Crescent Croydon. February 2022. Value \$500,000

And many more.

I consider that Eddie is a very experienced and knowledgeable project manager....I particularly appreciate Eddie's interaction with occupants and his expertise in remedial concrete rectification.

- (5) Charlie Thomas, Remedial Engineer at RHM Consultants, provided a reference confirming the Applicant's capabilities in similar terms, specifying that they had worked together on projects at 30-32 Folkestone Parade, Botany in 2016, 74-78 Crown Road Queenscliff in 2017 and 42-43 New Beach Road, Rushcutters Bay in 2015.
- (6) Peter Johnson, civil engineer, provided a reference confirming the Applicant's capabilities in similar terms, specifying that he had worked with the Applicant during his role as Remedial Engineer at Hyder Consulting, Arcadis and Acor Consultants on major projects including Eastpoint Towers Edgecliff in 2021-2022, 2 Clyde Street Silverwater in 2017 and Wetherill Park in 2014.
- (7) Daniel Green, remedial engineer, provided a reference from Landlay Consulting Group confirming the Applicant's capabilities in similar terms and specifying that he had undertaken multiple projects with the Applicant as Project manager including at 36 Cavill Street Freshwater in 2022, 286 Arden Street Coogee in 2018, and 43 Hereford Street Glebe in 2016. He said that:  
  
Each of the above projects was carried out in line with my expectations and I have found Eddie to be responsive, quality oriented, and very professional. We're satisfied with Eddie's performance and enjoy working with him on each project.
- (8) Daniel Ticconi, State Manager NSW for Mattioli, provided a reference Group confirming the Applicant's capabilities in similar terms, having known the Applicant for over a year in his role at Andersal, where Andersal undertook alterations, new construction, and structural modifications on a number of projects on behalf of Mattioli.

- (9) John Beaini, Director of Academy Construction and Development, is a licensed builder. He provided a reference for the Applicant in similar terms to those provided by the Applicant's other written references, having been managed by the Applicant at Andersal when he was subcontracted to Andersal building projects. Mr Beaini specified his and the Applicant's involvement in completed residential projects at 3/7 Grosvenor Crescent Croydon in February 2022, 106 Hall Street Bondi Beach in November 2021, 40 Bent Street Neutral Bay in 2020, 5 The Esplanade Elizabeth Bay in 2018, 30 Folkestone Parade Botany in 2016 – 2017, 2 Joe Street Neutral Bay in 2016, Cooper Park Road Bellevue Hill in 2013 – 2014, and "hundreds more residential projects".
- (10) Letters from Brett Finucane, Market Field Manager-Refurbishment, Sika Australia Pty Ltd; Harvey Welman, General Construction & Remedial Specialist of Ardex Australia Pty Limited; and Michael Herder, Operations Manager of Projex Group Pty Ltd were also provided which confirmed the Applicant's approval and competency to use their various building products appropriately and in accordance with relevant specifications.

96 With the exception of Mr Van Den Heuvel, none of the Applicant's referees were required for cross examination and their evidence was not challenged, save that the Respondent submitted that no weight should be afforded to them because, with the exception of Mr Beaini, they were not licensed contractors and did not supervise the Applicant in his experience.

97 I accept that the authors of these references were not supervising the Applicant's experience within the meaning of the Act and Instrument. That was Mr Van Den Heuvel's role. However, I disagree with the Respondent that no weight should be given to their references. Whilst not licensed builders, Daniel Green, Peter Johnson, Charlie Thomas, Anthony Fowler, Tom Mackay, and Rocardo Cardoso are engineers, each with vast experience in the building construction industry. Their evidence, combined with that of Mr Beaini and with the Managing Director of Andersal, does carry some weight in allowing the Tribunal to determine whether or not the Applicant is capable of managing and supervising the various and multiple trades involved in a "wide range of building construction work" as required by the Act and Instrument. Their evidence supports Mr Van Den Heuvel's opinion. If Mr Van Den Heuvel had not been able to provide the Tribunal with the extensive evidence he did at hearing, or the Tribunal had not accepted all of Mr Van Den Heuvel's evidence,

the Applicant could have relied on these references as supporting the limited descriptions provided by Mr Van Den Heuvel in the Referee Statements.

## **Conclusion**

- 98 I have accepted the evidence of the Applicant and Mr van den Heuvel in these proceedings, which provided the significant detail of the Applicant's roles, responsibilities and capabilities in a wide range of building construction work. The Applicant's experience at 5-7 The Esplanade, Elizabeth Bay, was over a period of 24 months and in my opinion this, in conjunction with the evidence that he was working full time for Andersal as a project manager on various projects at that time, is sufficient to demonstrate that he has two years' experience in accordance with the requirements specified in the Act and Instrument.
- 99 I am more than satisfied that the Applicant fulfils the criteria of the experience requirements of the Act and Instrument, that he has had experience of such a kind and for such a period as would enable him to do, or to supervise, the work for which the certificate is required, within the meaning of ss 33C(1)(b)(i) and 33D(1)(b) of the Act. It is undisputed that he fulfils the qualification criteria. I am satisfied that Mr Issa is capable of doing and supervising work for which an individual endorsed contractor licence in the category of "general building work" is required.
- 100 The correct and preferable decision is, therefore, to set aside the Respondent's decision and to grant the Applicant's licence.

## **Orders**

- 101 I make the following orders:

- (1) The Respondent's decision to refuse the applicant's application for a contractor licence is set aside.
- (2) In substitution for the respondent's decision, the applicant's application for a contractor licence is to be granted.
- (3) The respondent is to effect the grant of the individual endorsed contractor licence to the applicant within 14 days of publication of these reasons.

\*\*\*\*\*

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.  
Registrar

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