

BPB Appeal No. A1071

IN THE MATTER OF

the Building Act 2004 (the Act)

AND

IN THE MATTER OF

an Appeal to the Building Practitioners Board under Section 330(1)(a) by **the Appellant** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	24 October 2012 at [omitted]
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Appeal heard by:	Alan Bickers Colin Orchiston Brian Nightingale Dianne Johnson	Board Chairman (Presiding) Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (witness for the Appellant) [omitted] (witness for the Appellant) The Registrar, Mark Scully, was available by telephone but was not required to participate.
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 1 licence under s 288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined Design AOP 1 application and notified his decision by letter dated 1 June 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 5 July 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision
- 1.4 At a pre-hearing teleconference on 12 October 2012 the Chairman of the Board informed the parties of the procedural matters for the appeal.

2.0 Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.³ The minimum standards are set out as “competencies” in Schedule 1 to the Rules. 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 1⁴.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁵

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁶ however the Board will not review matters outside the scope of the appeal⁷.
- 3.2 The Appellant seeks the following relief:
“Seeking for the Board to reverse the decision of the Registrar and grant me the Design licence AOP 1.”

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 5 June 2012.

³ S286 of the Act and rule 4 of the Rules.

⁴ Clause 4(2) of the Rules

⁵ S330(1)(a) of the Act.

⁶ S335(2) of the Act

⁷ S 335(4) of the Act

- 3.3 In light of s335 (4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to reconsideration of Competency 3 for a Design AOP 1 licence.

Design Area of Practice 1 Licence

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

4.0 Registrar's report

- 4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁸. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.

- 4.2 In making the recommendation to decline the Design AOP 1 licence application, the Registrar noted the following reasons recorded by the Assessor:

- The Appellant holds a National Diploma in Architectural Technology and has 5 years design experience, all of it within the design office of a group housing company. The Appellant keeps up to date with industry related learning activities and his referees were supportive;
- The Appellant's role within the company is as a draughtsman, working under supervision. Drawings were completed on CAD under supervision and detailing used predominantly Building Code acceptable solutions. Specialist consultants and engineers were utilised where required. Specifications followed a standard company format and were completed by others; and
- The client brief, formal engagement, timelines, costs site investigation, systems and protocols were all in place but were to a greater part managed by others. Work that was not directly undertaken by the Appellant included:

Competency 3:

- Work with client to establish agreed brief and scope;
- Carry out or acquire site investigations and document existing conditions; and
- Update client on timelines and costs.

Competency 4

- Produce specifications.
- The Appellant is operating within his competency levels, within his limited role, but this role does not cover all of the Competencies in the Rules.

⁸ clause 10 and 11 of the Rules

The basis for the Registrar's decision to decline the application

- 4.3 The Registrar reviewed the assessor's report and the Appellant's application.
- 4.4 The Registrar based his decision on the assessor's recommendations, for the reasons set out above. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.
- 4.5 The Registrar noted that he disagreed with the assessor that the Appellant did not meet Competency 4: Develop design and produce construction drawings and documentation. He outlined his reasons below.
- 4.6 The Registrar found that the Appellant met Competency 4 because he took into account that:
- The referees reported that the Appellant "does both modifications to existing plans and new designs";
 - While the assessor found that the Appellant did not meet Competency 4 because he did not write specifications for the projects he submitted, the Board in past Appeal decisions has noted that it is not necessary for an applicant to demonstrate all performance indicators under a Competency; and
 - The assessor reported that the Appellant is qualified, keeps up to date, is well regarded by his referees, knows his company's systems and processes well, and works within his level of competence.

5.0 Appellant's Submissions

- 5.1 The Appellant appeared at the hearing and was supported by his design manager and a company director. The Appellant produced written material identifying each of the performance indicators of Competency 3 for Design AOP 1, and examples of the work done which demonstrated compliance with those requirements. Where necessary he explained issues as they arose, and responded to questions from the Board.
- 5.2 The Appellant is part of a small design team employed by a group housing company and managed by a Design AOP2 LBP. Design staff developed both standard designs and custom designs from the stage of initial concept study up to the application for a building consent. Typically, the concept design and design brief is developed by others directly engaged by local franchisees for the company; the designer would then receive those instructions and further research the site requirements sufficient to be able to confirm that the design is achievable, or otherwise to communicate with the client to arrive at an acceptable outcome. In this respect the "client" is two-fold: the direct client is the local franchise which has contracted to build a house for the owner, and the owner is also an indirect client. Accordingly the primary responsibility for dealing with the owner does not rest with the designer; the designer has primary responsibility for ensuring that the builder's contract is able to be built in compliance with a building consent.
- 5.3 The design manager's evidence was that each team member undertook about 5 house designs per month, and each project was allocated to a specific

designer who then carried it through to completion and took responsibility for that project. Whilst the design manager did not specifically supervise the designers, he was responsible for overall co-ordination and standards, and each member of the team participated in the peer review of work done by the others.

- 5.4 In that context, and in relation to the Competency 3 performance indicators, the Board's questions were directed at establishing firstly whether the Appellant was competent in those skills used in the course of his employment, and secondly if in independent practice as a designer that he could demonstrate that he met the remaining Competency 3 performance indicators for the Design Licence AOP1.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met Competencies 1, 2 and 4 for the Design AOP 1 licence:
- 6.2 The Board then considered Competency 3. This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 The LBP scheme is competency based, and it is up to the Appellant to demonstrate his competency.
- 6.4 The Board considered each of the Competency 3 performance indicators:

3.1.1 (Design brief): In respect of his employment tasks, the Appellant was not involved in developing the design brief, as that was undertaken by the local franchise. His role from then on was to apply the information thus gained, and to either amend a standard design or develop a new one on the basis of other standard designs and within the standard specifications used by the company. However, in response to questioning by the Board, he sufficiently demonstrated an understanding of how the users, budget, site, and design context generated and influenced design decisions.

3.1.2 (Site information): Much of the site information was provided by the local franchise, but as necessary, the Appellant researched whatever else was necessary, and, where required, undertook checks against District Scheme planning requirements, and initiated site surveys, geotechnical reports for foundation design, and services investigations. The Board was satisfied that the Appellant understood and demonstrated what site information was required, how it was gathered, and how it was applied.

3.1.3 (Construction knowledge): It was apparent from the ongoing volume of work being designed, and because the group housing environment provided ready feedback on the designs from the building teams, that the Appellant has a sufficient grasp of the construction technology applicable to Category 1 buildings.

3.1.4 (Environmental awareness): The Board was satisfied that the Appellant demonstrated an awareness of the environmental issues affecting the site such as orientation, weather exposure, runoff, proximity of nearby buildings,

and landform. He also indicated, in the course of discussing design procedures, that he understood the way in which these issues affected the design of the building.

3.1.5 (Preliminary design and specification): Generally, the first contact with a project would be the design brief and the site information supplied by others. However, the Appellant then applied this information to the more detailed site information and explored the technical issues sufficient to establish whether the project could proceed, or required to be modified, or that further information was required in order to do so. To that extent he demonstrated that he met the requirements for preliminary design and consideration of costs, and intervened as necessary to achieve the outcomes sought by the clients. The Board was thus satisfied that this performance indicator was met.

3.1.6 (Timelines and costs): The company employing the Appellant had well established systems for managing timelines and costs both in respect of the design process and the overall project costing. For those projects, the Appellant was not directly involved in estimating project costs or timelines. However, in response to the Board's questioning he was able to demonstrate that he both had access to and used in-house estimators, and had a clear understanding of the cost implications of design decisions. Accordingly the Board considered that to the extent required by the Design AOP 1, he sufficiently met this performance indicator.

Board's findings

- 6.5 The Board considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 3 for a Design AOP 1 Licence.

7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act the Board has resolved to reverse the Registrar's decision and license the Appellant with a Design Area of Practice 1 Licence.**

- 7.2 The Board directs the Registrar to issue a Design Area of Practice 1 Licence to the Appellant as soon as practicable.**

8.0 Publication of Name

- 8.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.

- 8.3 The Board having considered the circumstances of this appeal directs that the name and the particulars of the Appellant are not to be made public.

Signed and dated this 20th day of November 2012.

Alan Bickers
Chairman
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Act:

“330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
(a) *decline to licence the person as a building practitioner;*
...
- (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);*
...

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.”*