

**BPB Appeal No. A1297**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	21 <sup>st</sup> December 2017 Auckland
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Appeal heard by:	Richard Merrifield Mel Orange Robin Dunlop Faye Pearson-Green
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Appearances by:	The Appellant
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## 1.0 Introduction

- 1.1 The Appellant of [Omitted] applied for a Design Area of Practice (AOP) 2 Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 18 September 2017. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 10 October 2017 the Appellant lodged an appeal to the Board against the Registrar’s decision.

## 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.<sup>2</sup> The minimum standards are set out as “Competencies” in Schedule 1 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:  
  
*The grant of a Design AOP 2 Licence*
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 1, 2, 4 & 5 for a Design AOP 2 Licence.

### Design 2 Licence Competencies:

*Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.*

*Competency 2: Manage the building design process.*

*Competency 4: Develop design and produce construction drawings and documentation.*

*Competency 5: Manage construction phase.*

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>S335(4) of the Act

#### **4.0 Registrar's report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. 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 The Registrar's report notes, at paragraph **18**, the following from the Assessor's recommendations:

- The Appellant provided one project suitable for Area of Practice 1 and one project suitable for Area of Practice 2. The Appellant had carried out the design work but not the working drawings on either project.
- Both projects were recent and current, but were not up to the quality standards of design LBP.
- The Appellants knowledge of contracts and administration was "very sparse" when questioned by the assessor. The assessor also commented "I don't believe that this standard is high enough for someone that is applying for their own design license".
- The Appellant later provided three further projects which were of better quality.
- The Appellant has therefore demonstrated that, in the view of the assessor, "he is prepared to lodge substandard drawings for Building Consent" using time pressure from clients as an excuse.
- The assessor concluded "I believe there were too many inconsistencies in the appellants work. I believe him to be a good designer in the sense of design, however his checking and letting go of sub-standard design work cannot be overlooked.

4.3 The Registrar concluded:

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

- I have been delegated under S312 (1) to review the assessment report and make a decision about the appellant's application.
- I reviewed the assessor's report and the appellant's application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

#### **5.0 Appellant's Submissions**

5.1 The Appellant included with his appeal :

- 5.1.1 Cover Letter
- 5.1.2 Number of project examples
- 5.1.3 Resume
- 5.1.4 References
- 5.1.5 Terms of engagement
- 5.1.6 Client Emails

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<sup>7</sup> clause 10 and 11 of the Rules

- 5.2 The Appellant provided hard copies of the plans to the Board with notated details, these were in addition to plans submitted with the original appeal application.
- 5.3 The Board asked questions of the Appellant and the Appellant gave oral submissions.

## **6.0 Board's consideration**

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for the Design 2 licence:

### **Design 2 Licence Competencies:**

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

- 6.2 The Board then considered Competencies 1, 2, 4 & 5 for a Design 2 Licence. These Competencies 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 practitioner to demonstrate their competency.

### *Board's findings*

- 6.4 The Board concluded that the Appellant **did not provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2, 4 & 5 for a Design 2 Licence.
- 6.5 Whilst the appellant had a background in design and had familiarity with design processes he lacked the depth of knowledge required of a design area of practice 2 practitioner. The examples of his work provided had inconsistencies and showed a lack of quality control of the documentation process.
- 6.6 The Board also found that the appellant did not meet the competencies required for Design 1 Licence.

## **7.0 Board's Decision**

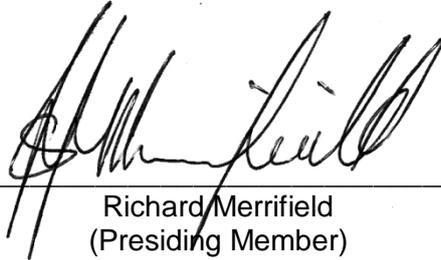
- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Design 2 Licence.**

## **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, 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 5<sup>th</sup> day of January 2018



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Richard Merrifield  
(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.”