

BPB Appeal No. A1304

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:	29 May 2018, Auckland
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Appeal heard by:	Richard Merrifield Mel Orange Bob Monteith 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 Licence (Area of Practice (AOP) 1) Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 22 March 2018. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 9 April 2018 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.² 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 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵. However, the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Design Licence (AOP 1)

- 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 3 & 4 for a Design Licence.

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

Competency 4: Develop design and produce construction drawings and documentation

¹Incorporating amendments for 2008, 2009 and 2010.

²S286 of the Act and rule 4 of the Rules.

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(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 recommendation⁷. 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 did not present evidence of projects fully prepared by himself and did not demonstrate repeatability across Design AOP 1.
- The Appellant did not "do the Building Consent Documentation for either project", having largely carried out bracing calculation and design.
- The Appellant stated to the assessor that he would struggle with some aspects of carrying out preparation of a full set of design drawings himself.

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 form a submission regarding his knowledge on Competencies 1, 2, 3 & 4

6.0 Board's consideration

6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of Competencies for the Design licence:

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

Competency 4: Develop design and produce construction drawings and documentation

⁷ clause 10 and 11 of the Rules

- 6.2 The Board then considered Competencies 1, 2, 3 & 4 for a Design 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2, 3 & 4 for a Design Licence.
- 6.5 The Appellant carries out very limited aspects of Design work, essentially restricting himself to the design of bracing elements. He was not able to satisfy the Board that he had the required knowledge and skills to undertake an end to end design process. He did not have any design experience outside of the limited area in which he practices.
- 6.6 The Board noted that the Respondent, in his submissions to it at the hearing, sought a design licence which was limited to the design work that he actually carries out. The licensing regime requires licensed building practitioners to work within their competence under section 314B(b) of the Act but does not include provisions or mechanisms to restrict or limit the scope of a licence. As such the Board is not able to order that a licence be issued in the manner in which it was sought.

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 AOP 1 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 7th day of June 2018



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.”*