

BPB Appeal No. A1060

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:	13 August 2012 at [omitted]
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Appeal heard by:	Colin Orchiston Brian Nightingale Dianne Johnson Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant The Registrar, Mark Scully, was available by teleconference
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1. Introduction

- 1.1 The Appellant of [omitted] applied for a Design Area of Practice (AOP) 2 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 the Design AOP 2 application and instead granted a Design AOP 1 licence, and notified his decision by letter dated 14 May 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 11 June 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 1 August 2012 the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

2. 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 met 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. 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 appeal seeks the following relief:
Granting 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 Competency 4.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 11 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 S335(4) of the Act

4. Design Area of Practice 2 Licence

Competency 4: Develop design and produce construction drawings and documentation

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 2 licence application and instead grant a Design AOP 1 licence, the reasons below were recorded by the Assessor:

- The Appellant has a long design career that commenced in 1972. He completed his BEng. (Civil) in 1983. From 1995 – current the Appellant has run his own residential design practice. He has a good set up in the basement of his home.
- The Appellant's referees were supportive, although with some reservations that the Appellant's drawings were 'light'.
- The Appellant submitted one category 1 project and one category 2 project for review. A third project viewed was also a category 1 project.
- The Appellant had not prepared documents ahead of the interview for one project, so these were viewed on a computer screen.

Project 1

- Re-clad and remediation work to a category 1 stucco clad house.
- The drawings were readable, but missing details when initially lodged. The plans were not to the level required and the Council requested a lot more information to be added to the plans.
- The specification was not extensive, did not reference all the required Standards and Codes, and read like scope of work.
- No calculations had been done for compliance with clause H1 of the Code.
- Overall the drawings fell well short of what would be expected for a complex project like this.

Project 2

- Re-clad and remedial work.
- Similar comments as for Project 1 also applied to this project.

General

- The Appellant was able to demonstrate most skills required for an AOP 2 licence; including Competencies 1-3 (covering the regulatory

⁸ clause 10 and 11 of the Rules

environment, managing the building design process, and establishing briefs and preparing preliminary designs).

- Given the risk associated with leaky buildings, the assessor considered that the documents the Appellant was presenting were not to the standard required of a Design AOP 2 practitioner. The Appellant was unable to demonstrate good quality work at AOP 2 level when it came to Competency 4: Develop design, and produce construction drawings and documentation. The Appellant's drawings "were thin to say the least", his specification was "also very light", and some details were not up to date.
- The Appellant did not know about the requirements of H1 (Energy Efficiency) and had not been asked to provide calculations to show compliance for any of his projects. (*While this is not a requirement for an alteration to an existing building - refer s112 of the Building Act – it is core knowledge for a designer*).
- The Appellant demonstrated Competency 4 repeatability by showing the assessor more than one project, however not at area of practice 2 level.

Appellant's Submissions

- 4.3 That he has been in the building industry for 40+ years.
- 4.4 That he is a qualified engineer with a long history of working in both commercial and residential construction.
- 4.5 That he has been considered competent prior to the 29th February 2012, so should still be considered competent.
- 4.6 He used other consultants to assist when dealing with issues outside of his expertise.
- 4.7 That he is a good communicator that relies on developing good relationships to ensure that his projects ran smoothly.

Board's consideration

- 4.8 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Design AOP 2 licence:

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

Competency 2: Manage the building design process.

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

- 4.9 The Board then considered Competency 4. This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

- 4.10 LBP scheme is competency based, and it is up to the Practitioner to demonstrate his competency.
- 4.11 The Appellant's appeal submission did not include examples of his drawings or other documentation, and was limited to his descriptions of experience and method of working, and responses to questions from the Board. The Board was unable to verify that the required competencies had been met, and was reliant on the Assessor's opinion in that respect.
- 4.12 The Board considered that the evidence before them was insufficient to overturn the Assessors opinions, or to demonstrate that the competency requirements of Competency 4 had been met.

Board's findings

- 4.13 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Design AOP 2 licence.

5. Board's Decision

- 5.1 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 Area of Practice 2 licence. The appeal is therefore declined.**

6. Costs

- 6.1 Pursuant to s338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.⁹
- 6.2 Neither the Appellant nor the Registrar sought costs. The Board having considered the circumstances of this appeal directs that the costs shall lie where they fall.

7. Publication of Name

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

⁹ The "parties" are the Appellant and the Registrar. The Board is not a party.

- 7.3 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 day of August 2012.

Colin Orchiston
(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.*