

BPB Appeal No. A1085

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:	11 June 2013 at [omitted] Heard by teleconference
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Appeal heard by:	Colin Orchiston Richard Merrifield Dianne Johnson Jane Cuming	Presiding Member Board Member Board Member Board Member
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Design 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 6 August 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.2 On 28 August 2012, 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 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 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 AOP 1 Licence.
- 3.3 In light of 355(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competency 1 for the grant of a Design AOP 1 licence.

Design AOP 1 Licence Competency:

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

¹ Incorporating amendments for 2008, 2009 and 2010.

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

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

- 3.4 The Appellant had sought a hearing on the papers only. However, the Board considered that it was not appropriate to address the Competency 1 matters on this basis, and sought and obtained the Appellant's agreement to conduct the hearing as a teleconference.

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 assessor's recommendation.

- 4.2 The Registrar's report notes, at paragraph 20, in respect of the Appellant's application for a Design AOP 1 licence, the following from the Assessor's recommendations:

" ...

- *From 1968 to 1971 [the Appellant] worked as a draughtsman for the [omitted].*
- *1971 to 1984 [the Appellant] worked as a draughtsman for the [omitted].*
- *From 1984 to present [the Appellant] is a self employed architectural designer.*
- *[The Appellant] carries out the majority his work from his home office. He does have some technical manuals to referee to but does not have any architectural reference books. [The Appellant's] documentation was kept loose in suspended files and was not bound into sets.*
- *The plans for Project 1 were confusing and when questioned, [the Appellant], could not add clarity to the project.*
- *[The Appellant's] drawings have some idiosyncracies, however they do contain most of the necessary information and are attractive and clear. [The Appellant's] specifications are acceptable despite being dated and having anomalies.*
- *[The Appellant's] specifications are edited from an in-house template and are dated, however they have no mention of the New Zealand Building Code.*
- *Project 2, when it was submitted to the Building Consent Authority, attracted ten questions about anomalies between [The Appellant's] drawings and the specifications. The assessor recommended [the Appellant] to start looking at using Smartspec – an online specification template.*
- *[The Appellant] uses alternative solutions, however he had difficulty explaining principles behind legislation and how the Building Code works. In addition to this [the Appellant] could not answer questions about law and regulation correctly.*

⁷ clause 10 and 11 of the Rules

- *[The Appellant's] lack of regulatory knowledge would pose a risk to his clients.*
- *[The Appellant] could not demonstrate an understanding for the regulatory environment and was unable to meet Competency 1 for the Design licence."*

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

4.3 The Registrar concluded:

"21. I reviewed the assessors report and [The Appellant's] application.

22. I based my decision on the assessor's recommendation. 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 answered questions from the Board related to his knowledge of the regulatory environment and his awareness of working within his own competence.

5.2 The Board advised the Appellant that it had also read and considered the information provided by him for the purposes of a hearing on the papers.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for a Design AOP 1 Licence:

Design AOP 1 Licence Competencies:

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.

6.2 The Board then considered Competency 1 for a Design AOP 1 Licence. 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 practitioner to demonstrate their competency.

6.4 The Appellant's responses indicated insufficient understanding of the regulatory environment of the building construction industry. It was apparent to the Board that he was uncertain about legislation and compliance requirements.

Board's findings

- 6.5 The Board recognised that Competency 1 was the only matter at issue, and that the Appellant's documentation and technical knowledge were not before them for consideration. However, on the evidence before them, the Board was not satisfied that the Appellant's depth of regulatory knowledge met sufficient of the performance indicators in Competency 1.

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 an Design Area of Practice 1 Licence. The appeal is therefore declined.**

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 28th day of June 2013

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 license 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.”*