

**BPB Appeal No. A1102**

**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:	26 February 2013 at [omitted] Heard on the papers at Appellant's request
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Appeal heard by:	Colin Orchiston Brian Nightingale Richard Merrifield Bill Smith	Presiding Member Board Member Board Member Board Member
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## **1.0 Introduction**

- 1.1 The Appellant of [omitted] applied 10 April 2012 for a Design Area of Practice (AOP) 3 Licence under s 288(2) 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 Design AOP 3 Licence application and granted the Design AOP 1 Licence. The Appellant was notified of this decision by letter dated 21 August 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 17 September 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.<sup>2</sup> 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 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 Area of Practice (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, and 4 for a Design AOP 2 licence.

### **Design Area of Practice 2 Licence:**

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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

- 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.*

3.4 At the Appellant's request the Board heard the appeal on the papers.

#### **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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 20, in respect of the Appellant's application for AOP 3, the following from the Assessor's recommendations:

" ...

- *From 1982 to 1984 [the Appellant] completed both a Bachelor of Design Studies and Bachelor of Architecture from the [omitted].*
- *In 1985 [the Appellant] worked on the design of one to two storey [omitted] in [omitted] as a support person.*
- *From 1986 to 1990 [the Appellant] worked for [omitted] in [omitted] and [omitted] on a range of new residential and commercial projects as a support person.*
- *In 1992 [the Appellant] worked at [omitted] in [omitted] designing 2 storey terrace house projects.*
- *From 1992 to 1993 [the Appellant] worked at [omitted] in [omitted] designing one to three storey terrace houses as a lead designer. In addition to this she carried out some interior design projects.*
- *1993 to 1994 [the Appellant] worked at [omitted] and Associates working on both residential renovations and commercial interior fit outs.*
- *1999 to present [the Appellant] works as a self employed designer carrying out the design work on one to three storey residential projects.*
- *[The Appellant] (in June 2012) had asked the assessor to assess [the Appellant] for Design AOP 2 instead of Design AOP 3, as [the Appellant] had made a mistake on their application. The assessor explained that once the application was given to assessment that it had to be carried out as received.*

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

- *The assessor deemed the projects provided by [the Appellant] fitted Design AOP 2.*
- *The projects provided by [the Appellant] lacked a distinct presentation style and were missing crucial details from the initial building consent application.*
- *The referees were supportive of [the Appellant's] application, however [omitted] did confirm that [the Appellant's] drawings were lacking in line weight definition.*
- *[The Appellant] presented an additional project to the assessor. The project confirmed to the assessor that [the Appellant's] projects lack the required line weights.*
- *[The Appellant's] specifications were passible, however [the Appellant] was using an older version of Masterspec and it did not contain any project specific product specifications.*
- *[The Appellant] was questioned by the assessor in regards to contract administration. [The Appellant] lacked clarity on this matter, however [the Appellant] did produce a New Zealand Standard Contract that [the Appellant] formulated between [the Appellant] and the builder.*
- *The assessor requested [the Appellant] provide clarity around [the Appellant's] knowledge of contracts, which [the Appellant] did.*
- *[The Appellant] would have been initially taught under the manual drafting conventions and therefore would know the need for line weight definition.*
- *[The Appellant] was able to demonstrate most requirements for Design AOP 2, however [the Appellant's] drawings and specifications are not up to the standard of Design AOP 2 and meets [sic] Design AOP 1."*

4.3 The Registrar concluded:

- “21. *I reviewed the assessors report and [the Appellant's] application.*
22. *I was not satisfied with the assessor's reasoning for why [the Appellant] did not meet the requirements for Design AOP 2, and requested additional information from the assessor regarding which Competencies were not been met at Design AOP 2.*
23. *The assessor noted the following:*
- *[The Appellant] did not meet Competency 1, as [the Appellants] application and operation of the Building Act and Regulations are not within the standard of Design (AOP) 2.*
  - *Competency 2 [the Appellant] did not explain construction observation and contract administration to a satisfactory level for Design (AOP) 2.*
  - *[The Appellant] met Competency 3.*

- *[The Appellant] did not meet Competency 4 preparing detailed drawings to Design (AOP) 2 standard. [The Appellant's] specifications were not up to Design (AOP) 2 standard.*

24. *I based my decision on the assessor's recommendation that [the Appellant] did not demonstrate the following competencies for Design (AOP) 3:*

- *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."*

## **5.0 Appellant's Submissions**

- 5.1 The Appellant provided 318 pages of supporting documentation. This included a 10 page summary, a 130 page specification for a project which followed the Appellant's original application, and detailed drawings for two projects 2009-2012 that were submitted in the original application.
- 5.2 The Appellant admits that they were in error when applying for AOP 3, and that during the course of assessment the Appellant tried to change to AOP 2. The relief sought in this appeal is the issue of a Design AOP 2 licence.

## **6.0 Board's consideration**

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met the following competencies for the Design AOP 3 licence:

- 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.*

- 6.2 In view of the relief sought, the Board limited its consideration to Competencies 1, 2 and 4 for the Design AOP 2 licence.
- 6.3 Each of those competencies is described by performance indicators, and the Board noted that the competencies can be met by some or all of the performance indicators being demonstrated.
- 6.4 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.5 The Board considered the various comments by the Registrar and the Assessor on the quality and extent of the documentation provided in the

original application. The Board noted the Assessor's criticism of the CAD draughting, but considered this to be more a matter of style than lack of competence, and that the issue should be whether or not the documentation provided an appropriate level of communication.

- 6.6 The Board received further documentation in addition to that provided to the Assessor, and assessed it in terms of the performance levels required for AOP 2. Having now reviewed all the Appellants submissions, including the project specification, the submitted designs, and the builder's references, the Board considers that the evidence before them demonstrates that the Appellant has met sufficient of the performance indicators for the Design AOP 2 Competencies 1, 2 and 4.

## **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 2 Licence.**

- 7.2 The Board directs the Registrar to issue a Design Area of Practice 2 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 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 ..... 2013.

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Colin Orchiston  
(Presiding Member)

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**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.”*