

BPB Appeal No. A1366

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
[Omitted] against a decision
of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	23 March 2022, by videoconference
----------------------------------	-----------------------------------

Appeal heard by:	Mr M Orange, Legal Member (Presiding) Mr D Fabish, LBP, Carpentry Site AoP 2 Ms F Pearson-Green, LBP Design AoP 2 Mr G Anderson, LBP, Carpentry Site AoP 2
------------------	---

Appearances by:	[Omitted]
-----------------	-----------

1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Christchurch applied for a Design Licence (Area of Practice (AOP) 1) 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 email dated 8 December 2021. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 20 December 2021, 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 Schedule1³.
- 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 License (AOP 1)

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

- 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 2 and 3 for a Design Licence.

Design Licence Competencies:

Competency 2: Manage the building design process.

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

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] produced two projects which were well completed, thorough, and provided duplicate evidence for the role that she was employed in. She did not have any direct experience of the initial upfront design work, as required for competencies 2 and 3.
- She was supported by her referees; however, one of these had only had minimal contact with her. The other two referees were in-house staff who she works with on a regular basis. She did demonstrate a good knowledge of the regulatory environment.
- The work she has completed is very well done and she is enthusiastic and should be encouraged in her chosen career. While I am not recommending granting of a licence in this instance, I believe she should be encouraged to obtain the necessary experience in competencies 2 and 3 before reapplying for her licence.

⁷ clause 10 and 11 of the Rules

4.3 The Registrar concluded:

- 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 provided a submission with her appeal outlining how she believed she met Competencies 2 and 3. The Board was also provided with the documentation submitted with the original application.

5.2 At the appeal hearing, the Board questioned the Appellant with respect to Competencies 2 and 3 with respect to both a new build on a site with an existing dwelling and potential resource consent issues and a renovation of an existing dwelling. The Appellant was asked to describe the processes she would use when dealing with a client and the design matters that she would need to take into consideration for a range of scenarios.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Design licence (AOP 1):

Design Licence Competencies:

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

Competency 4: Manage construction phase design.

6.2 The Board then considered Competencies 2 and 3 for a Design (AOP 1) 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 **provided** evidence to demonstrate that she met sufficient Performance Indicators to satisfy the requirements of Competencies 2 and 3 for a Design Licence.

- 6.5 The Appellant answered the questions put to her with confidence and she displayed an acceptable level of knowledge and understanding of the required competencies. Notwithstanding, the Board does recommend that the Appellant, who currently works for a group housebuilder, is cautious in her approach when she starts dealing directly with clients, that she develops and utilises a mentoring network, considers joining a member organisation and works within the limits of her Design AoP 1 licence.

7.0 Board's Decision

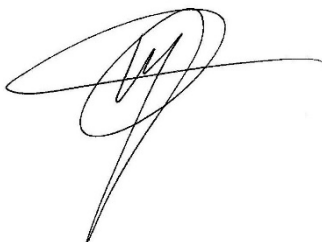
- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [Omitted] with a Design (AOP 1) Licence.

- 7.2 The Board directs the Registrar to issue a Design (AOP 1) Licence to [Omitted] 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 30th day of March 2022.



Mr M Orange
(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.”*