

BPB Appeal No. A1033

IN THE MATTER OF

the Building Act 2004

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

1. Introduction

- 1.1 The Appellant applied for Design Area of Practice 2 (AOP 2) License under S.288 (2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined The Appellant's application under Rule 12 and The Appellant was notified of the Registrar's decision on 10 November 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.2 On 17 November 2011², The Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board upholds The Appellant's application and grants The Appellant Licensed Building Practitioner status in Design AOP 2.
- 1.4 A pre-hearing teleconference was convened by the Chairman of the Board with The Appellant on 2 February 2012. The Board's Assistant Secretary was in attendance.
- 1.5 The Board decided to hear the appeal on 7 February 2012. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.6 The Procedure provides that appeals are considered by way of a "re-hearing"³ and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure).
- 1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 17 November 2011.

³ Refer S.335(2) of the Act.

Alan Bickers	Board Chairman (Presiding)
Jane Cuming	Board Member
Dianne Johnson	Board Member
Brian Nightingale	Board Member
William Smith	Board Member
Pam Lwee	Board Secretary

Appellant and supporting witnesses:

The Appellant

Registrar:

Mark Scully

1.8 The Board received the Registrar's report of 25 November 2011.

2. Background

- 2.1 The Appellant submitted his application to the Registrar to be licensed as a Design AOP 2 building practitioner on 3 August 2011.
- 2.2 On 5 August 2011, the Registrar wrote to The Appellant advising him that his application for Design AOP 2 was complete and had proceeded to assessment.
- 2.3 Assessment Systems Limited (ASL) reviewed the application.
- 2.4 The assessment was completed on the 27 October 2011 and the Assessor recommended to the Registrar (under Rule 11) that The Appellant's application for Design AOP 2 should be declined and that Design AOP 1 license be granted.
- 2.5 After taking into account the recommendation of the Assessor and the requirements of section 286 of the Act, the Registrar decided (under Rule 12) to decline the application for a Design AOP 2 license and grant a Design AOP 1 license.

3. The Registrar's Report & Submissions

- 3.1 In order to become licensed, The Appellant was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under S.286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For Design AOP 2, these competencies are:

- *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.*

In order to be licensed an applicant must demonstrate that he/she meets all the required Competencies of the Licence Class.

- 3.2 These competencies may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).
- 3.3 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.
- 3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).

Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.

- 3.5 In making the recommendation to decline The Appellant's application, the Assessor noted:
- The projects submitted were clearly Category 1 buildings and could not be considered as suitable projects for an AOP 2 Design Licence which was applied for. This was acknowledged by The Appellant.
 - The Appellant has had a long and extensive experience in the construction industry, which is predominately based in the UK. He has very limited experience in New Zealand as a designer.
 - The Appellant's experience in New Zealand relates mainly to Building Inspector/Building Control Officer roles where he has gained an in-depth knowledge of the New Zealand regulatory environment and building processes.
 - As a new designer to New Zealand, The Appellant has completed four small projects, none of which are AOP Category 2 buildings. The projects sighted were low complexity Category 1 buildings, Design AOP 1.
 - The Appellant provided evidence to meet the competencies required for Design AOP 1.
 - The Appellant did not provide any evidence of his involvement with contract administration or construction observation roles, however, he could describe these roles to a good level.
 - The Appellant's referees were positive from a client's perspective.

4. The Appellant's Submissions

- 4.1 The Appellant referred the Board to what he considered were a number of inaccuracies and inconsistencies within the Assessor's and Registrar's reports.
- 4.2 The Appellant noted that the Licensed Building Practitioners Rules contained no recognised qualifications for Design. The Appellant pointed to his professional training and memberships of 6 industry organisations and submitted this as evidence of his qualification, experience and knowledge to hold a Design AOP 2 license.
- 4.3 The Appellant submitted examples of buildings in the United Kingdom, which he considered were the equivalent of category 2, where he had carried out concept and some aspects of developed design, liaised with consultants and certifiers, and obtained planning approvals. No independent verification of The Appellant's scope of involvement with these projects was provided by him.
- 4.4 The Appellant noted that the Registrar had declined his application on the basis that he did not meet competency 4 and made oral submissions to the Board on why he considered that he met this competency.
- 4.5 The Appellant then responded to questions from Board members.

5. Board's Consideration

- 5.1 The Board noted that the Registrar was satisfied that The Appellant met the following competencies for a Design AOP 2 license:
- *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.*
- 5.2 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.
- 5.3 The Board considered that The Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competency 4.
- 5.3 The Board, therefore, concluded that The Appellant did not meet the competency requirements for a Design AOP 2 licence.

6. Board's Decision

6.1 Pursuant to S.335 (3) of the Act, the Board has resolved to decline the appeal and uphold the Registrar's decision not to issue The Appellant with a Design AOP 2 License.

6.2 The Board's reasons are that The Appellant has not demonstrated, to the Board's satisfaction, that he meets all of the competency requirements of the Design AOP 2 License.

6.4 The Board considers that subject to obtaining further qualifications and training and/or undergoing further experience working as a designer on Category 2 and/or 3 buildings, The Appellant may be capable of meeting the competencies of Design AOP 2 at a future date.

7. Costs

7.1 Pursuant to S.338 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.⁴

7.2 The Board invited submissions from the Appellant and the Registrar on costs.

7.3 Neither the Appellant nor the Registrar sought costs.

7.4 The Board, having considered the circumstances of this appeal and the submissions, directs that costs shall lie where they fall.

8. Publication of Name

8.1 Pursuant to S.339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars. The Board invited submissions from the Appellant on this matter. The Appellant indicated that he would prefer that his name was not published.

8.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant not be published.

Signed and dated this 28th day of February 2012

Alan Bickers
Chairman
(Presiding Member)

⁴ The "parties" are the Appellant and the Registrar. The Board is not a party.

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

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; or*
 - (b) *suspend or cancel his or her licensing.*

- (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); or*

...

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.*