

**BPB Appeal No. A1047**

**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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**1. Introduction**

- 1.1 On 20 December 2011 the Appellant applied for Design Area of Practice 1 (AOP 1) 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”) 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 7 March 2012, together with his right to appeal the decision within 20 working days to the Building Practitioners Board (“the Board”).
- 1.3 On 27 March 2012<sup>2</sup>, 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 reverses the decision and grants a Design AOP 1 Licence.
- 1.4 A pre-hearing teleconference was convened by the Acting Deputy Presiding Member of the Board with the Appellant, on 18 May 2012. The Board’s Secretary was in attendance.
- 1.5 The Board decided to hear the appeal in [omitted] on 28 May 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”<sup>3</sup>, 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:

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Received by Board Secretary on 27 March 2012.

<sup>3</sup> Refer S.335(2) of the Act.

*Board Members and support staff:*

David Clark	Acting Deputy Chair Member (Presiding)
Colin Orchiston	Board Member
Jane Cuming	Board Member
William Smith	Board Member
Pam Lwee	Board Secretary LBP Appeals and Complaints

*The Appellant and supporting witnesses:*

The Appellant

*Registrar and support:*

Mark Scully

*Others in attendance:*

Sharn Christensen            DBH Staff member

1.8    The Board received the Registrar's report of 14 April 2012.

**2.    Background**

- 2.1    The Appellant submitted his application to the Registrar to be licensed as a Design AOP 1 building practitioner on 20 December 2011.
- 2.2    On 9 January 2012, the Registrar wrote to the Appellant advising him that his application for Design AOP 1 was complete and had proceeded to assessment.
- 2.3    The assessment was completed on 20 February 2012 and the Assessor recommended to the Registrar (under Rule 11) that the Appellant's application for a Design AOP 1 licence should be declined.
- 2.4    After taking into account the recommendation of the Assessor and the requirements of S.286 of the Act, the Registrar decided (under Rule 12) to decline the application for a Design AOP 1 licence.

**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 1, 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 she/he meets all the required Competencies of the Licence Class.

- 3.2 These competences 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 application, the reasons below were recorded by the Assessor:
- The Appellant is working at a very low level in the industry and had only completed a few projects. The projects submitted by the Appellant for assessment were very minor in complexity and content. There wasn't any evidence of repeatability as the second project was the removal and replacement of a window.
  - The standard of documentation presented by the Appellant was very basic with only rudimentary information provided. The Appellant lacks the background of a draughts person to guide him in his presentation and detailing.
  - The Appellant has a very good regulatory knowledge, and was very aware of working within his own level of competence.
  - The Appellant had limited knowledge of engagement matters and the role of the designer in the industry (including the design process, environmental and social impacts, and conditions of contract).
  - The Appellant had not yet reached the level where the assessor considered that he is safe to work at AOP 1 level.
- 3.6 The Registrar's decision was to decline the application for a Design AOP 1 licence.

#### **4. The Appellant's Submissions**

4.1 The Appellant affirmed his evidence and then made written and oral submissions to the Board. In these he referred to three additional pieces of information which he provided:

- Letters of engagement and acceptances by clients for two recent alteration projects which had not been seen by the assessor;
- Handwritten notes of clients meetings, 3D presentations of the proposed alterations for the two recent projects; and
- Plans and specifications for the two recent projects.

4.2 The Appellant also made oral submissions in respect of the projects and described in some further detail as to his involvement with his clients, the type of work that he undertook in receiving the instructions, the briefing with his clients, the development of the design through to working drawings and his on-going contact with his clients. He affirmed the plans and specifications for the two recent projects had been consented.

4.3 It can be noted that the Appellant's submissions focused on the two new projects in particular (rather than the projects originally submitted as part of his application) in order to establish that the performance indicators under each of the competencies had been met. Indeed, although he did refer briefly to the information which had been submitted in support of his original application for licensing, he preferred the Board to focus on the two new projects which he had submitted.

4.4 Throughout his submissions the Appellant responded to questions from the Board which concentrated on the performance indicators under competency 3 and competency 4.

#### **5. Board's Consideration**

5.1 The Board noted that the Registrar did not consider that the Appellant met the following competencies for a Design AOP 1 licence:

- *Competency 3: The Appellant did not meet the minimum requirements for establishing design briefs and scope of work and prepared preliminary design.*
- *Competency 4: The Appellant did not meet the minimum requirements for developed design and produced construction drawings and documentation.*

5.2 The Board then considered Competency 3 and 4. These Competencies 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's evidence demonstrated that he met sufficient performance indicators to be considered to meet the requirements of Competency 2.

5.4 In particular, the Board was satisfied that the evidence provided by the Appellant in respect of the two new projects established that the Appellant was able to liaise with his clients, establish design briefs, engage with his clients and prepare preliminary designs. Furthermore, based on the working drawings and

specifications which were produced in respect of the projects the Board was also satisfied that the Appellant was able to meet the minimum requirements for the production of construction drawings and documentation.

- 5.5 However the Board did note that some areas of the working drawings identified a need for the Appellant to continue to work on his professional development. The Board would encourage the Appellant to continue developing his skills in these areas either under the guidance of senior designers and/or architects or through a peer group or professional association. The Board was satisfied however the Appellant understood that he is required to work within his competencies with respect to this license class.
- 5.6 The Board, therefore concluded by majority decision that the Appellant did meet the competency requirements for a Design AOP 1 licence.

## **6. Board's Decision**

- 6.1 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 1 Licence.**
- 6.2 Pursuant to Clause 3.11.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Design Area of Practice 1 Licence to the Appellant as soon as practicable.**
- 6.3 The Board's reasons are that the Appellant has demonstrated, to the Board's satisfaction, that he meets all of the competency requirements of the Design Area of Practice 1 Licence.**

## **7. Costs**

- 7.1 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.<sup>4</sup>
- 7.2 Both parties were asked as to whether they wished to make submissions as to costs. The Appellant advised that he did not wish to seek costs although the Registrar asked that costs be reserved. In the circumstances therefore the Board invites costs to be submitted to the Board. The Board would request that the Registrar file his submissions (if any) as to costs within ten working days of the receipt date of this decision with the Appellant having the right to respond five working days thereafter.

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<sup>4</sup> The "parties" are the Appellant and the Registrar. The Board is not a party

**8. 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 13<sup>th</sup> day of June 2012

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David Clark  
Acting Deputy Chair  
(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.”*