

BPB Appeal No. A1050

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 On 24 January 2012 the Appellant applied for Design Area of Practice 1 (AOP 1) Licence under S.288 (2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007 ("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 14 March 2012 together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 3 April 2012¹, 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 Chair (Presiding Member) of the Board with the Appellant on 21 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"², 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 Received by Board Secretary on 3 April 2012.

² Refer S.335 (2) of the Act.

- 1.7 The following were present for the hearing of the appeal:

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 16 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 24 January 2012.
- 2.2 On 27 January 2012, the Registrar wrote to the Appellant advising him that his application for a Design AOP 1 was complete and had proceeded to assessment.
- 2.3 Assessment Systems Limited (ASL) reviewed the application.
- 2.4 The assessment was completed on the 21 February 2012 and the Assessor recommended to the Registrar (under Rule 11) that the Appellant's application for Design AOP 1 license should be declined.
- 2.5 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:

(Competency 1)

- The Appellant has a good level and understanding of the regulatory environment and regularly outlines the code requirements from his point of view to the local BCA. He regularly attends BRANZ seminars and is a member of the [omitted].

(Competency 2)

- Filing and record keeping "are not [the Appellant's] strong points".
- The Appellant had no checking system and it appeared he submitted documents to Council and then waited for requests for information ("RFIs") to work his way through them. Project 1 had 8 RFIs. Project 2 had 16 RFIs.
- Drawings were amended and re-issued but there was no indicator on the plans, other than a change of date, to show what was amended (Project 1).
- The Appellant provided construction supervision for Project 1, but there were no formal records of site meetings, site instructions or variation requests.

(Competency 3.)

- No evidence of 'conceptual drawings' was shown to the assessor.
- There were no written briefs for the projects submitted.
(Competency 4.)
- Drawings lacked basic information, set-out, and notational requirements. Details are correct in construction but the quality of the drawn information makes it hard to confirm compliance. Drawings were hard to read with no referencing and a lack of notations (Project 2).
- The specification lacked the basics in description of workmanship and references to standards
- There were a number of contradictions between the drawings and the specification (Project 1).

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 made written and oral submissions to the Board. In these he referred to two projects and provided drawings and specifications of each for the Board's perusal.

[Omitted]: An existing hut had been relocated in a non-urban position as a day shelter for workmen. The documentation was required to show the foundations in order to get a retrospective consent, and to provide new toilet facilities. The first task involved measuring up the building so as to provide new construction to suit, and in this respect it was similar to a simple house extension. The second building was very minor, but involved the provision of a septic tank installation. The drawings are rough and rudimentary, but appear to show the necessary construction elements. The "specification" was a schedule of work subdivided by trade.

[Omitted]: This was a new build residential project for itinerant workers or visitors in a rural location. Construction was simple trussed gable roof over timber framed structure with timber flooring on timber piles. The appellant described it as being at the upper end of the work undertaken by him, and included sketch proposals followed by contract drawings: it is understood that the work was undertaken by tradesmen and labourers under the direct control of the owner. The drawings are rough and rudimentary, but appear to show the necessary construction elements. The "specification" was a schedule of work subdivided by trade, accompanied by simple descriptions subdivided by trade, and fire and bracing documentation. Several of the references therein were well out of date.

4.2 The basis of the Appellant's submissions that he be granted a licence was that although he was usually consulted on matters of building maintenance and for certificates of compliance, he was also occasionally required to do drawings and documentation for minor works. He considered that his long experience in construction, and instruction in technical drawing undertaken as an apprentice, was adequate to prepare drawings and documentation for the sort of work he undertook.

- 4.3 The Appellant then responded to questions from Board members, during which he indicated that the level of work undertaken was maybe five or six small alteration projects per year, and which were built by either the owners or builders engaged by them. Typical projects were bathroom upgrades, deferred maintenance, and simple minor additions to domestic buildings.

5. Board's Consideration

- 5.1 The Board noted that the Registrar declined to issue a Design AOP on the grounds that the Appellant did not meet competencies 2, 3 and 4 of that licensing class.

- 5.2 Competency 2: Manage the building design process:

In the absence of information which the Board considers would have indicated that the Appellant had adequate, consistent, verifiable, and repeatable processes in place, the Board was unable to conclude that the performance indicators for this competency had been met.

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

The submissions in this respect only covered the sketch designs prepared for the [omitted] building. In appeal A1004 the Board considered that the word "design" refers to the "range of processes comprising the analysis of needs, service requirements and operating conditions, and the synthesis of elements, materials and systems to achieve the desired objectives."

On the basis of the information produced for the [omitted] project, the Board did not consider that the design tasks described in the performance indicators had been met.

- 5.4 Competency 4: Develop design and produce construction drawings and documentation.

In appeal A0001 the Board held that the fact that a territorial authority accepted a designer's documents as adequate for the purposes of issuing a building consent does not – of itself - demonstrate that the Design AOP1 competencies are met.

The Board recognises that different styles and standards of presentation may be suitable for different purposes. However, the Board must consider whether the information made available to it establishes that the required performance standards would be consistently met across the whole range of projects available to an AOP 1 Design LBP.

The project information, when considered collectively, must communicate to its users in a coherent and understandable way, uncompromised by uncertainty ambiguity error or the absence of necessary information.

The Board considered that the Appellant's documentation did not cross that threshold.

6. Board's Decision

6.1 Pursuant to S.335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to issue the Appellant with a Design AOP 1 Licence. The appeal is therefore declined.

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.³

7.2 Neither the Appellant nor the Registrar sought costs. The Board having considered the circumstances of this appeal directs that the 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 ____ day of June 2012

David Clark
Acting Deputy Chair
(Presiding Member)

³ 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.*