

BPB Appeal No. A1056

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	10 July 2012 at [omitted]
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Appeal heard by:	Colin Orchiston Jane Cuming Brian Nightingale Bill Smith Richard Merrifield	(Presiding Member) Board Member Board Member Board Member Board Member
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Appearances by:	The Appellant The Registrar, Mark Scully, was available by teleconference
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1. Introduction

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 2 Licence under s 288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Design AOP 2 application and notified his decision by letter dated 1 May 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 May 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 20 June 2012 the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

2. Licensing scheme

- 2.1 To become licensed, a person must satisfy the Registrar that they can meet all the applicable minimum standards for licensing.³ 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 Schedule1⁴.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁵

3. Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁶ however the Board will not review matters outside the scope of the appeal⁷.
- 3.2 The appeal seeks the following relief; grant of the lower level of licence: a *Design AOP 1 licence*.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being consideration of Competencies 1, 2, 3 and 4.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 17 May 2012.

³ S286 of the Act and rule 4 of the Rules.

⁴ Clause 4(2) of the Rules

⁵ S330(1)(a) of the Act.

⁶ S335(2) of the Act

⁷ S335(4) of the Act

4. Design Area of Practice 1 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.*

Registrar's report

- 4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁸. 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 In carrying out an assessment, the Assessor appointed by the Registrar must use the "Assessor Guidelines" prescribed by the Registrar. The Registrar must take into consideration the Assessor's recommendation before making a decision but is not bound by the recommendation.
- 4.3 In making the recommendation to decline the application, the reasons below were recorded by the Assessor:
- The Appellant has not worked in an architectural office to gain experience or been mentored by a design professional.
 - The Appellant's office is an enlarged closet which lacks reference material. The Appellant does not keep up to date with industry developments and lacked understanding of the requirements of being a licensed building practitioner, the building categories, and restricted building work. The Appellant did not present any experience of working with the Resource Management Act.
 - The Appellant has little knowledge of contract administration.
 - Project 1 was for the design of additions and alterations to a Category 1 house.
 - Project 2 was for the design of a new Category 1 house.
 - The Appellant's drawings had deficiencies including being poorly arranged and lacking details, particularly for the gull wing roof in project 2, which is a high risk design feature prone to failure. The specification for project 1 was little more than a scope of works, and there was no specification for Project 2. Some information in Project 2 was not relevant to the project.

⁸ clause 10 and 11 of the Rules

Appellant's Submissions

- 4.4 The Appellant acknowledged that his original application was inadequate.
- 4.5 The Appellant tabled evidence of courses attended and qualifications including the recently achieved National Diploma of Architectural Technology.
- 4.6 The Appellant submitted examples of his work including a site assessment, PIM application, Land Use application, Resource Consent procedures and concept, development, consent and "for Construction" documentation for several projects and explained his involvement with these and the relevance of each to the various performance indicators.
- 4.7 Copies of checklists, workflow sheets and various business forms used by the Appellant in the general course of his business were also provided.
- 4.8 The Appellant provided evidence of his registration to various internet based information providers which he uses to access technical information and product news.
- 4.9 The Appellant also provided references.

Board's consideration

- 4.10 The Board considered Competencies 1, 2, 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.
- 4.11 The Board was satisfied that the Appellant demonstrated his competency in sufficient performance indicators of Competencies 2, 3 and 4.
- 4.12 The Board then considered the Appellants submissions with respect to Competency 1. The Appellant had clear limitations in his knowledge of the regulatory performance indicators. The Board was also concerned that the Appellant had no clear avenue of professional support.
- 4.13 The Board noted the Appellants efforts to up skill and encourages the Appellant to continue seek further professional development in order to maintain and continually update his skills, knowledge and practices.
- 4.14 Notwithstanding paragraph 4.13, the Board considered that the Appellant demonstrated that he met sufficient performance indicators of Competency 1 to meet the requirements of this Competency.

Board's findings

- 4.15 The Board considered that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 1, 2, 3 and 4.

5. Board's Decision

5.1 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.

5.2 The Board directs the Registrar to issue a Design Area of Practice 1 Licence to the Appellant as soon as practicable.

6. Costs

6.1 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.⁹

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

6.3 Neither the Appellant nor the Registrar sought costs.

6.4 The Board, having considered the circumstances of this appeal and the Submission's, directs that costs shall lie where they fall.

7. Publication of Name

7.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.

7.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.

7.3 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 day of August 2012.

⁹ The "parties" are the Appellant and the Registrar. The Board is not a party

Colin Orchiston
(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.”*