

BPB Appeal No. A1061

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:	14 August 2012 at [omitted]
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Appeal heard by:	David Clark Colin Orchiston Jane Cuming Brian Nightingale William Smith Dianne Johnson Richard Merrifield	Deputy Chair (Presiding Member) Board Member Board Member Board Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] support for the Appellant Mark Scully (the Registrar)
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1. Introduction

- 1.1 The Appellant of [omitted] applied for a 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 instead granted a Design AOP 1 licence, and notified his decision by letter dated 14 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 11 June 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 26 July 2012 the Deputy Chair 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 Schedule 1⁴.
- 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:
Reversal of Registrar’s decision to decline Design AOP 2 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 11 June 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 2 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 Procedures⁹ require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessors' recommendation.
- 4.2 In making the recommendation to decline the Design AOP 2 licence application and instead grant a Design AOP 1 licence, the reasons below were recorded by the Assessor:
- The Appellant worked at various activities before operating a design business from 1995. The Appellant has worked on his own for a number of years and has not worked in a situation where training has been provided to guide him in matters of practice and documentation compilation.
 - The Appellant was not making wise choices in regard to some of his detailing and material selections. However, the Appellant considered that what he was doing was right because he had few problems on his projects.
 - The Appellant did not have his files in an order that allowed the assessor to view the chronology of the projects at the assessment.
 - Much of the Appellant's work goes over what he has on screen and no record of the process is retained either electronically or in hard copy.
 - The order of the Appellant's drawings was unconventional. The Appellant's drawings are clear, but the assessor had to hunt to locate detail as the cross referencing was limited to the cross section lines on the plan and some details highlighted on the sections. Some details were contradictory and some expected details were missing.
 - The specifications were both taken off a pirated [omitted] which had not been edited and had critical information missing. The documents were unindexed and bore no relationship to the projects.
 - The Appellant's knowledge of the LBP Scheme and the regulatory environment were satisfactory but he had little understanding of how his role related to contracts, health and safety, project costing and the design process.

⁸ clause 10 and 11 of the Rules

- The Appellant's understanding of contract administration / observation was extremely vague.

Appellant's Submissions

- 4.3 The Appellant tabled the following supporting evidence:
- A paper addressing the competencies with examples and reasons why he considered he met them.
 - References from people involved in the projects he was to table as evidence.
 - Schematic plans of a theoretical building demonstrating that minimal design changes were sufficient to adjust the risk matrix and consequently the classification of the building from Category 1 to Category 2.
 - A number of additional projects as examples of work he has carried out on Category 2 buildings.
 - Correspondence on his impending registration to [omitted].
 - A proforma of his engagement contract.
- 4.4 The Appellant submitted that because the Registrar has already considered the Appellant meets the competencies for AOP 1 then to meet the competencies for AOP 2 the Appellant need only demonstrate his competence in the specific performance indicators that differ between AOP 1 and AOP 2.
- 4.5 The Appellant submitted that he was capable of carrying out Design AOP 2 work.
- 4.6 The Appellant advised the Board that he was currently taking action to join an industry related professional organisation and to improve his specifications.
- 4.7 The Appellant submitted that he met sufficient performance indicators in each competency to be considered competent in all competencies.

Board's consideration

- 4.8 The Board noted that the Registrar was not satisfied that the Appellant met any of the competencies for the Design AOP 2 licence.
- 4.9 The Board then 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.
- 4.10 The LBP scheme is competency based, and it is up to the Practitioner to demonstrate his competency.
- 4.11 In respect of the Appellant's submissions on the relative distinctions between Category 1 and Category 2 buildings, the Board's view is that competency is not necessarily dependent upon - or demonstrated by - work on projects which might be related to Category 2 rather than Category 1 because of minor site or technical differences. This is consistent with earlier Appeal decisions where the Board has found that where, for example, a building consent has been

issued that, is of itself, not conclusive as to the satisfaction of particular Design competencies. A LBP seeking a Design AOP 2 licence must be able to demonstrate his/her competency to work on the broad range of projects and tasks encompassed by Category 2 buildings.

- 4.12 The Appellant submitted evidence of work carried out on Category 2 buildings however, in the Board's view it was, apart from one case, of minor or limited scope and did not reflect the degree of difficulty or complexity necessary to demonstrate the competencies required by an AOP 2 licence. Furthermore the Board also had some concerns about how some technical issues were (or were not) addressed, and about the Appellant's understanding of the construction and contract administration processes.
- 4.13 In the Boards view, the Appellant has failed to demonstrate that he has met a sufficient number of AOP 2 performance indicators in Competencies 1, 2, 3 and 4.

Board's findings

- 4.14 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Design AOP 2 licence.

5. Board's Decision

- 5.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Design Area of Practice 2 Licence. The appeal is therefore declined.**

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.¹⁰
- 6.2 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.

¹⁰ The "parties" are the Appellant and the Registrar. The Board is not a party

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 September 2012.

David Clark
Deputy Chair
(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.”*