

BPB Appeal No. A1062

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:	1 October 2012 at [omitted]
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Appeal heard by:	Alan Bickers	Board Chairman (Presiding)
	Colin Orchiston	Board Member
	Brian Nightingale	Board Member
	Dianne Johnson	Board Member
	Richard Merrifield	Board Member

Appearances by:	The Appellant
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1.0 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 Design AOP 2 application and granted the Appellant 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 14 June 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 26 September 2012 the Chairman of the Board informed the Appellant of the procedural matters applying to the hearing of the appeal.

2.0 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 meets 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

3.0 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 Appellant sought the following relief:
“Granting of Design 2 Licence as applied for.”
- 3.3 In light of S 335 (4) and the Registrar’s decision letter, the Board interprets its consideration of the appeal as being restricted to consideration of Competencies 2, 3 and 4 for the AOP 2 licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 14 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

Design Area of Practice 2 Licence

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.

4.0 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 making the recommendation to decline the Design AOP2 and instead grant a Design AOP 1 licence, the reasons below were recorded by the Assessor:

- The Appellant started work with a firm of architects after leaving school in 1975, and started his own architectural design practice in 1992.
- The Appellant is not involved in any industry organisation, has no formal qualifications and has not taken part in any recent industry training. Aside from this, he is convinced that what he is doing is right.
- The Appellant had supportive referees.
- The Appellant was able to answer the questions relating to the regulatory environment, health and safety, the LBP⁹ scheme and RMA¹⁰, and his knowledge of construction processes and consenting seemed to be satisfactory.
- The Appellant was not conversant on the areas around procurement, contracts, contract administration / observation and the Construction Contracts Act.
- The Appellant specifications were generic and not to a suitable standard for today's needs. The Appellant was reluctant to admit that this was the case as he had been getting building consents using the document although he had been questioned on this recently by a BCA.¹¹
- Neither of the projects submitted by the Appellant included a design path. The design sequence was not available as the Appellant worked over earlier versions which were not kept as separate files. No evidence of any sketch elevations was provided and only one outline hand drawn section was provided.
- The Assessor considered that the Appellant has grasped only a portion of the CAD¹² programme.
- The Appellant did not provide sufficient evidence of his competence to satisfy the Assessor that he met the standard necessary for a Design licence at AOP 2 to be granted. On this basis, the Assessor recommend that the Appellant be offered a licence at AOP 1 level.

⁸ Clauses 10 and 11 of the Rules.

⁹ Licensed Building Practitioners.

¹⁰ Resource Management Act 1991.

¹¹ Building Consent Authority.

¹² Computer-aided design.

The basis for the Registrar's decision to decline the application

- 4.3 The Registrar reviewed the Assessor's report and the Appellant's application.
- 4.4 The Registrar based his decision on the Assessor's recommendation, for the reasons set out above.
- 4.5 The Registrar did not consider that there was sufficient reason or concern to overrule the Assessor's recommendation.
- 4.6 The Registrar did not agree, however, with the Assessor that Competency 1 was not met at Design AOP2, as the Assessor had stated in the report that the Appellant satisfactorily answered questions regarding the regulatory environment.
- 4.7 Following notification on 14 May 2012 of the Registrar's decision to decline the Appellant's application for Design (AOP2), and grant Design (AOP 1) the Appellant contacted the Building and Housing Group and subsequently entered into correspondence with the Registrar.
- 4.8 As the Appellant was strongly critical of the Assessor, the Registrar asked an external moderator to review the assessment. The Moderator, [omitted], was independent of the Building and Housing Group and was free to provide whatever comment he wished to about the assessment function of the LBP scheme. [omitted] provided the Registrar with a detailed report based on listening to the whole recording of the assessment. In his report [omitted] has made some suggestions to the Assessor on how he could improve on his assessment style. [omitted] supported the Assessor's recommendation, although (like the Registrar) did not agree that Competency 1 was not met.
- 4.9 A copy of the Moderator's report was appended to the Registrar's report.

5.0 Appellant's Submissions

- 5.1 The Appellant outlined his work history to the Board and the nature of the drafting and design work he had undertaken. He stated that he established his own design practice in 1991 working from his home. The nature of work which he had undertaken covered institutional [omitted], commercial [omitted] and residential buildings. He had done considerable repeat work for his clients over 20 years. He carried out approximately 50 projects a year.
- 5.2 The Appellant stated that he had not completed formal qualifications but had extensive experience in architectural and structural drafting.
- 5.3 The Appellant advised the Board that he did not offer contract administration services.
- 5.4 He tabled a range of documents for the Board to examine:
- A basic Short Form Agreement for Designer Engagement which he conceded that he used infrequently;
 - Copy of a basic design brief setting out the Client's requirements;

- Examples of preliminary sketch plans for residential buildings;
- Copy of plans submitted for a building consent;
- A recently developed check list of features to be included on plans for application to the building consent authority;
- Plans and specification for a two-storey residence which had been recently constructed in [omitted]. (These included structural design drawings endorsed by [omitted], Chartered Professional Engineer).

5.5 The Appellant explained to the Board his process of aggregating changes to design drawings, but that he did not save copies of earlier versions.

5.6 The Appellant responded to questions from the Board Members covering a wide range of matters focused on the performance indicators for Competencies 2, 3 and 4 for the Design AOP2 licence. These included –

- Examples of recent Category 2 buildings which he had designed;
- His daily working routine;
- His design methodology;
- Technical matters;
- Materials and building techniques;
- Procurement of construction;
- Site investigations, geotechnical design and natural hazards;
- How he maintained up to date information on new building materials and components;
- Understanding of resource consent requirements;
- Conditions of contract suitable for building construction;
- Occupation requirements under the Act;
- Other regulatory matters affecting building design e.g. food hygiene, disability access, health and safety;
- Use of monetary allowances in contracts.

The Board did note, however, that the Appellant's understanding of some aspects of construction observation was intuitive, rather than based on good understanding and experience, and that he had no knowledge of the requirements of the Construction Contracts Act 2002.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Design AOP 2 licence:

Competency 1: Comprehend and apply knowledge of the regulatory.

6.2 The Board then considered Competencies 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.

In respect of the performance indicators relating to Competency 2 – *Manage the building design process* The Board's assessment was as follows:

Performance Indicator	Board's Assessment
2.2.1	Satisfactorily demonstrated.
2.2.2	Has recently developed a checklist for consent applications. Ensures structural design drawings are reviewed and signed off.
2.2.3	Does not undertake construction observation but was able to satisfactorily discuss key aspects of process.
2.2.4	Does not undertake contract administration and was weak in his explanations of some aspects. Did not know about requirements of Construction Contracts Act.
2.2.5	Satisfactorily demonstrated.

The Board notes that in respect of Competency 2 that the AOP2 licence requirements are differentiated from AOP1 by the additional performance indicators 2.2.3, 2.2.4 and 2.2.5. The Board paid particular attention to these noting that the Appellant demonstrated a high level of knowledge and experience in some but a negligible amount in others.

Overall, the Board considered that the Appellant had demonstrated sufficient (albeit marginal) of the performance indicators to be considered to meet the requirements of Competency 2. The Appellant should consider upskilling in some areas especially the Construction Contracts Act.

- 6.3 In regard to Competency 3 – *Establish design briefs and scope of work and prepare preliminary drawings* the Board assessed the Appellant against the performance indicators based on the evidence presented and his responses:

Performance Indicator	Board's Assessment
3.2.1	Satisfactorily demonstrated.
3.2.2	Satisfactorily demonstrated.
3.2.3	Satisfactorily demonstrated within the Appellant's acknowledged limits of competence.
3.2.4	Satisfactorily demonstrated.
3.2.5	Satisfactorily demonstrated.
3.2.6	Satisfactorily demonstrated.

The Board was satisfied that the Appellant had demonstrated that he met the requirement of Competency 3.

- 6.4 In regard to Competency 4 – *Develop design and produce construction drawings* the Board's assessment against the performance indicators was:

Performance Indicator	Board's Assessment
4.2.1	Satisfactorily demonstrated.
4.2.2	Satisfactorily demonstrated through a range of examples.
4.2.3	Satisfactorily demonstrated through co-ordination

Performance Indicator	Board's Assessment
	and integration of inputs from geotechnical and structural engineers.
4.2.4	Satisfactorily demonstrated but the Appellant's technique of aggregating the work is undesirable. He should save copies of earlier versions of documents and implement a document control system.
4.2.5	Satisfactorily demonstrated although process should be formalised.
4.2.6	Knowledge was demonstrated, albeit at a basic level. Appellant conscious of limitations of knowledge and should upskill.
4.2.7	Satisfactorily demonstrated.

The Board was satisfied that the Appellant met sufficient of the performance indicators to be considered to meet the requirement of Competency 4.

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

7.0 Board's Decision

- 7.2 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 2 Licence.**

- 7.3 The Board directs the Registrar to issue a Design Area of Practice 2 Licence to the Appellant as soon as practicable.**

8.0 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 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 15th day of October 2012.

Alan Bickers
Chairman
(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.”*