

BPB Appeal No. A1066

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:	24 October 2012 at [omitted]
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Appeal heard by:	Alan Bickers Colin Orchiston Brian Nightingale Dianne Johnson	Board Chairman (Presiding) Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (witness for the Appellant) [omitted] (witness for the Appellant)
	The Registrar, Mark Scully, was available by telephone but was not required to participate.

1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 1 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 1 application and notified his decision by letter dated 24 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 25 June 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision
- 1.4 At a pre-hearing teleconference on 12 October 2012 the Chairman of the Board informed the parties of the procedural matters for 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 seeks by way of relief from the Board the granting of a Design AOP 1 licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 25 June 2012.

³ S 286 of the Act and Rule 4.

⁴ Clause 4(2) of the Rules

⁵ S 330(1)(a) of the Act.

⁶ S 335(2) of the Act

⁷ S 335(4) of the Act

3.3 In light of s 335 (4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 3 and 4 for a Design AOP 1 licence which are as follows:

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

Competency 4: Develop design and produce construction drawings and documentation for Design.

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 the Registrar to decline the Design AOP 1 licence application the assessor noted the following reasons:

- The Appellant qualified as an Architect in [omitted] but has no New Zealand recognised qualification. The Appellant has some 9 years experience in the NZ design industry;
- The Appellant keeps reasonably up to date with industry related learning activities, was able to demonstrate an understanding of the regulatory environment, and understands the LBP scheme and the principle of working within the Appellant's level of competence;
- The Appellant works as a draftsman under the umbrella of a large housing franchise [omitted] and the systems the company uses. The Appellant was conversant with all aspects of the systems the company uses and how they operated, but the Appellant was not directly involved in all of them. The Appellant's role is largely restricted to drawing documentation and so some aspects/competencies are largely taken away by other processes and/or administrators within the company. All of the Appellant's work is supervised; and
- Work that was not directly undertaken by the Appellant in relation to the required competencies included:

Competency 3

- Work with client to establish agreed brief and scope;
- Carry out or acquire site investigations and document existing conditions;
- Arrange and coordinate specialist design inputs; and
- Update client on timelines and costs.

⁸ clause 10 and 11 of the Rules

Competency 4

- Update client on timelines and costs; and
- Produce specifications.

The assessor considered that the Appellant is operating within the Appellant's competency levels within their limited role, but that this role does not cover all of the Competencies required under the LBP Rules.

4.3 *The basis for the Registrar's decision to decline the application:*

The Registrar reviewed the assessor's report and the Appellant's application.

4.4 The Registrar based his decision on the assessor's recommendations, for the reasons set out in 4.2 above. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

4.5 The Registrar noted that the New Zealand Qualifications Authority (NZQA) reports that the Appellant's [omitted] (Title of Architect) was awarded in 2001 by the [omitted] on completion of course requirements. The New Zealand Qualifications Authority (NZQA) reported that this qualification translates as 'Title of Architect', and has been assessed as being equivalent to a Bachelor's degree at Level 7 from a New Zealand University. In New Zealand, a Level 9 Masters degree followed by professional practice under supervision (normally a minimum of two years) is required for a person to become an Architect. The Registrar concluded that the 'Title of Architect' as used in [omitted] is not comparable with the title 'Architect' as used in the Registered Architects Act 2005.

4.6 *Competency based assessment:*

Rule 7(4) provides that applicants who hold a 'recognised qualification' do not need to provide certain information that would otherwise be required. The effect of Rule 7(4) is to create a 'streamlined' licensing process for people who hold a 'recognised qualification'. There are no recognised qualifications in the Rules for the Design licence.

4.6.1 This means that all assessment of Design licence applications is 'competency based'. Qualifications lend weight to an application, but the licensing decision is primarily based on the evidence of practice (i.e. the 'project records') provided by an applicant during assessment, and the confirmation of that practice provided by the referees.

5.0 Appellant's Submissions

5.1 The Appellant submitted that the Assessor had misinterpreted the Appellant's current role in [omitted]. To support the Appellant's submissions the Appellant called two witnesses to give evidence:

5.2 Witness 1 stated in evidence that [omitted] provided services not only to [omitted] franchisees throughout New Zealand but also to at least 3 other major group building companies. The scope of services provided by [omitted] covered –

- Design;
- Estimating, and
- Accounting.

Witness 1 stated that the Appellant was part of the design team within [omitted] comprising up to 5 design draftspersons and a manager [omitted] located in [omitted].

- 5.3 Witness 1 stated in evidence that the design team carried out around 300 design projects for mainly new houses and approximately 60% of these were design/build contracts for the franchisees and other client group builders. As such these were essentially original designs based on the customers' briefs and not standard designs although there was a proportion that were. Witness 1 stated that many of [omitted] standard designs were quite old and needed adaptation to be compliant with current building code and consent requirements, the specific requirements of the client, the site conditions and the territorial authority (district plan rules).
- 5.4 Witness 1 stated that it was his responsibility to allocate work amongst the members of the [omitted] design team and that the designers were individually responsible for the full design process from receiving a design engagement from the client to completion of construction working drawings and specifications. He stated that the Appellant was required to carry out around 5 house designs per month.
- 5.5 Witness 1 also stated that the Appellant was not "supervised" by him or any other member of the design team and was fully responsible for their allocated projects. As part of the internal quality management procedures within [omitted] the work of all design team members was reviewed and checked by another team member. This included his own work⁹ and it would be expected that at times he would review and check the Appellant's work and vice versa.
- 5.6 Witness 1 confirmed that since the introduction of restricted building work earlier in the year he had "signed off" the Appellant's designs for building consent purposes but prior to that the Appellant had signed off on their own designs.
- 5.7 The Appellant tabled information for review by the Board as examples of the Appellant's work to demonstrate the extent to which their work met the performance indicators of Competencies 3 and 4. This material, which was verified as comprising the Appellant's work or material the Appellant used, included the following documents:
- [omitted] - Statement of Client's specific requirements, site plans, geotechnical report, preliminary drawings, review of applicable District Plan provisions, structural design input from engineers, construction drawings, updating information on costs and timelines using JSL's systems. This building was a bespoke design. The building had to provide for full wheel chair accessibility for its disabled owner.

⁹ [omitted] stated that he was a Licensed Building Practitioner Design AOP 2.

- ii. [omitted] – Site investigations, geotechnical reports, preliminary drawings, construction drawings, updating information on costs and timelines using [omitted] systems.
 - iii. [omitted] – Specification using standard template amended to suit Client’s requirements when employed by [omitted].
 - iv. [omitted] – Construction drawings, specification using standard template amended to suit Client’s requirements.
- 5.8 The Appellant confirmed that they carry out 4 or 5 design projects per month for [omitted].

6.0 Board’s consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met Competencies 1 and 2 for the Design AOP 1 licence:
- 6.2 The Board then considered Competencies 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.
- 6.3 The LBP scheme is competency based, and it is up to the Appellant to demonstrate their competency.
- 6.4 The Board considered the additional material presented by the Appellant, the evidence adduced from the Appellant’s witnesses and their submissions in relation to the requirements of Competencies 3 and 4 for a Design AOP 1 licence.

Board’s findings

- 6.5 The Board assessed the information presented the hearing in relation to the requirements of Competencies 3 and 4.

In relation to Competency 3 *Establish design briefs and scope of work and prepare preliminary design* the Board’s assessment of the Appellant’s current competence against the performance indicators was as follows:

Performance Indicator	Board’s Assessment
3.1.1 <i>Work with client to establish an agreed brief and scope.</i>	The Appellant’s direct client is the franchisee who identifies and communicates the brief and scope for the design.
3.1.2 <i>Carry out or acquire site investigations and accurately document existing conditions.</i>	Satisfactorily demonstrated through documents produced.
3.1.3 <i>Demonstrate knowledge of design practice and methods, building elements and construction processes.</i>	Satisfactorily demonstrated.

3.1.4 <i>Consider environmental and social impacts when developing design solutions.</i>	Satisfactorily demonstrated through examples demonstrating consideration for sun position, views, disabled persons requirements, district plan rules.
3.1.5 <i>Prepare and present preliminary drawings and outline specification.</i>	Satisfactorily demonstrated through documents produced.
3.1.5 <i>Present information to client on timelines and costs.</i>	Demonstrated the need to meet franchisee's requirements for design and building costs and meet timelines. Liaises with [omitted] quantity surveyors on building costs. Uses [omitted] systems for monitoring design costs and timelines.

In relation to Competency 4 *Develop design and produce construction drawings and documentation for Design* the Board's assessment of the Appellant's current competence against the performance indicators was as follows:

Performance Indicator	Board's Assessment
4.1.1 <i>Apply design standards and identify and produce specific design solutions.</i>	Satisfactorily demonstrated.
4.1.2 <i>Apply basic knowledge of principles of building technology and performance.</i>	Satisfactorily demonstrated.
4.1.3 <i>Coordinate and integrate specialist design inputs as required.</i>	Satisfactorily demonstrated through inputs of structural and geotechnical engineers.
4.1.4 <i>Prepare developed design drawings and specifications.</i>	Satisfactorily demonstrated. Examples of customised standard specifications produced.
4.1.5 <i>Update clients on timelines and costs.</i>	Not demonstrated. [omitted] quantity surveyors advise on building costs. Not involved with construction timelines.
4.1.6 <i>Demonstrate knowledge of conditions of contract.</i>	Demonstrated basic knowledge but is not involved directly with contracts.
4.1.7 <i>Produce detailed drawings, specifications and documentation suitable for building consent and construction.</i>	Satisfactorily demonstrated through examples produced.

6.6 Having regard for its assessment the Board considered that the Appellant provided evidence to demonstrate that they met sufficient performance indicators to be considered to meet the requirements of Competencies 3 and 4 for a Design AOP 1 Licence. Consequently the Board decided to uphold the appeal.

7.0 Board's Decision

7.1 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.

7.2 The Board directs the Registrar to issue a Design Area of Practice 1 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 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 20th day of November 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.”*