

BPB Appeal No. A1068

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:	Appeal heard on the papers The Board convened 24 September 2012 to consider the appeal
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Appeal heard by:	Alan Bickers Colin Orchiston Dianne Johnson Brian Nightingale	(Presiding Member) Board Member Board Member Board Member
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Appearances by:	No appearances
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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 7 June 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.

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 meet 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:

“To be granted Design Licence, Area of Practice “.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competency 4.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 28 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 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 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 projects presented were a cross section between Category 1 AOP1 and Category 2 AOP2;
- The lesser project had all the complexities required for AOP2 apart from the required risk matrix;
- The recommendation to decline the AOP 2 application was made because the Appellant could not provide evidence of repeatability for Cat 2 AOP2.
- The absence of evidence of repeatability is the "only reason" a recommendation for decline of the AOP2 licence is made.
- The Appellant:
 - Has approximately 17 years experience;
 - Is a current member of [omitted];
 - Keeps up to date with regular learning activities;
 - Has acceptable level of documentation to meet minimum standard;
 - Has a good understanding of the regulatory environment, contracts and contract administration role;
 - Has a basic understanding of LBP requirements; and
 - Met all of the competencies required to meet Design AOP 1.

4.4 The Registrar, in his report⁹ to the Board, records that his decision was based upon the assessor's recommendation.

5.0 Appellant's Submissions

5.1 The Appellant enclosed documentation for three additional projects with his appeal form. In his appeal form, the Appellant noted that he had not submitted those projects previously because he had an "...*incomplete understanding of the criteria differentiating the licensing classes...[and] believed that structural*

⁸ Clauses 10 and 11 of the Rules

⁹ Report dated 16 July 2012 paragraphs 21-23.

complexity was the main criterion for differentiating between Design 1 and Design 2 classes, rather than external risk matrix considerations..."

- 5.2 Given the narrow scope of the appeal and equally narrow reasons for the Registrar's decision to decline the application, the ability to have the appeal determined by the Board on the papers was highlighted to the Appellant. The Appellant confirmed to the Board Secretariat that he was happy for his appeal to be determined on the papers.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met competencies 1, 2, and 3, for the Design AOP 2 licence.
- 6.2 The Board then considered the Design AOP 2 licence Competency 4. This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.3 Having reviewed the Appellant's appeal and accompanying documentation a report prepared Richard Te One (a LBP Design AOP3) reviewing a number of the Appellant's projects, the Registrar's report and an assessment of the projects submitted, the Board considered the documentation addressed performance indicators 4.2.1 - 4.2.4 and 4.2.7 but not 4.2.5 or 4.2.6. The Board considered that on the basis of the new documentation provided that the Appellant demonstrated sufficient of the performance indicators for Competency 4 to meet the requirements of the Design AOP 2 licence.

Board's findings

- 6.4 The Board is conscious that the three projects were not before the Registrar at the time the Design AOP 2 application was declined.
- 6.5 The Board is satisfied however that sufficient performance indicators within Competency 4 are demonstrated by the three projects.

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 2 Licence.**
- 7.2 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 invites the Appellant to advise the Board whether he wishes his name and/or particular be withheld from publication.

Signed and dated this 10th day of October 2012.

Alan Bickers
(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.”*