

**BPB Appeal No. A1074**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	5 November 2012 at [omitted]
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Appeal heard by:	Jane Cuming Brian Nightingale Dianne Johnson	Presiding Member Board Member Board Member
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Appearances by:	The Appellant  The Registrar, Mark Scully, was available by telephone but was not required to participate.
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## **1.0 Introduction**

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 1 Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Design AOP 1 application and notified his decision by letter dated 6 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 9 July 2012<sup>2</sup>, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 29 October 2012 the Presiding Member of the Board informed the appellant 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.<sup>3</sup> 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 1<sup>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:  
The Appellant requested that he would like to be granted a licence in Design Area of Practice 1.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as consideration of Competencies 1, 2, 3 and 4 for a Design AOP 1 licence.

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Received by Board Secretary on 9 July 2012.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1)(a) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

## 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.*

### 4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>8</sup>. 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 that the Design AOP 1 licence application should be declined, the assessor noted the following:

- The Appellant has been involved with draughting work since 1986, and has been self-employed since 2003.
- The Appellant provided a certified copy of a Level 4 Architectural exam result from 1984. His application states he holds the NZ Certificate Draughting (Architecture) (NZCD). However the assessor noted that evidence of holding the qualification was not provided, and that the NZCD was a five stage certificate and that the final architecture drawing exam number was 5012.
- The Appellant has no formal training as an architectural draughtsman or designer and has only worked under guidance in structural engineering practises (sic). The Appellant has minimal recent learning activities.
- The Appellant has not been involved in obtaining a resource consent, has insufficient knowledge of the regulatory and legislative environment and the LBP scheme.
- The Appellant advised his clients what his hourly rate was but there was no written engagement.
- The projects presented for the assessment were minor alterations to existing homes. A third project was for a reinstatement of a home destroyed by fire. The Appellant's drawings lacked information and there were no specifications. The Appellant's knowledge of building techniques and mythologies (sic) is insufficient to adequately and clearly produce a set of documentation for building projects in compliance with the building code.

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<sup>8</sup> clause 10 and 11 of the Rules

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

- 4.3 The Registrar reviewed the assessors' report and the Appellant's application.
- 4.4 The Registrar rang the assessor to discuss his report, particularly in regard to Competency 3 since this was not clearly addressed in the report. The assessor agreed that there was some evidence that the Appellant met Competency 3. However, he advised that the concept for Project 1 was minimal and showed no relationship to the land or to the neighbouring buildings, or even a North point. No evidence was provided for Project 2. There was no evidence for either project on timelines and costs. The assessor also said that the Appellant was poorly prepared for his assessment, and had limited understanding of the LBP scheme and of good design practice.
- 4.4 The Registrar based his decision on the assessors' recommendations, for the reasons set out above. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

## **5.0 Appellant's Submissions**

- 5.1 The Appellant had provided 100 pages of supporting documentation in advance of his appeal which covered design documentation for two projects. One of these projects was a proposed new self-contained Bach to replace a fire damaged building at [omitted]. The second project was a house alteration and addition at [omitted].
- 5.2 In his appeal hearing the Appellant presented information for each project including; a description of his approach to the site investigation, a comprehensive description of the steps he takes in obtaining resource consent, his development of the design brief, design documentation, timelines and cost. Board members were able to view the building specification and a set of drawings for each project. Both projects were category 1. The first project had been submitted for Building consent but had not been built. The second project had been built. The Appellant was not able to confirm if a CCC had been issued. The Appellant responded to questions from the Board members about the drawings, specifications and building methodology.
- 5.3 The Appellant provided a certified copy of a Level 4 Architectural exam result from 1984. When questioned about his qualification the Appellant explained he had undertaken a structural draughting cadetship (NZCE) between April 1982 and April 1985 but had not completed the qualification as he had chosen to travel overseas. He provided references from the two structural engineering companies he worked for while training. He also provided evidence of having undertaken short term draughting contracts in Sydney in 1985 and London in 1989.
- 5.4 The Appellant provided three more recent references from; a building contractor who had worked on two building projects he designed before 2007, a former HR manager who attested to him having designed an extension to a light timber frame hospital building in 2008 and the clients of his second project, a house alteration and addition designed in 2010.

## **6.0 Board's consideration**

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the competencies for the Design AOP 1 licence.
- 6.2 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.
- 6.3 The LBP scheme is competency based, and it is up to the Practitioner to demonstrate his competency.
- 6.4 In answering questions from the Board it became clear that the Appellant had updated the drawings and specifications submitted to support his appeal application to correct issues raised by the assessor in his original application interview and to bring the documents up to date with current requirements.
- 6.5 The Board considered the appellant could not adequately explain the design process and the construction drawings and documentation.
- 6.6 The Board considered that the Appellant did not meet sufficient performance indicators to be considered to have met the requirements of Competencies 1, 2, 3 or 4.

### *Board's findings*

- 6.7 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Design AOP 1 licence.

## **7.0 Board's Decision**

- 7.1 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 1 Licence. The appeal is therefore declined.**

## **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 .....day of December 2012.

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Jane Cuming  
(Presiding Member)

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**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.”*