

BPB Appeal No. A1101

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:	12 March 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Jane Cuming Dianne Johnson	Presiding Member Board 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 a Design Area of Practice (AOP) 2 Licence under s288(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 Licence application and notified his decision by letter dated 20 August 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 17 September 2012, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 18 December 2012 the Appellant was informed 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.² 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 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵ however the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Design AOP 2 Licence.
- 3.3 In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3 and 4 for a Design AOP 2 licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ 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 recommendation⁷. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 21, the following from the Assessor's recommendations:

" ...

- *The Appellant started his working career as a carpenter and completed his National Diploma in Architectural Technology in 2003. From here, the Appellant worked for a development company for a year before starting his own practice in 2005.*
- *The Appellant has had no experience of working in an architect's or designer's office to really get an understanding of how documents go together in a manner that works well on site. Many of the Appellant's practices are at variance with the accepted norms and standard requirements for the preparation of architectural documentation.*
- *The Appellant had little to offer the assessment by way of a filing system, and what he could provide was disorganised. There was little to no correspondence with his clients in either briefing or confirmation of fee proposals. The Appellant had no record of his design process.*
- *Most of the details used in the Appellant's drawings were copied from manufacturer's instructions, codes or standards with no modification to make them project specific. The Appellant has a limited understanding of the requirements for specifications, which was confirmed to the assessor when the Appellant acquired a copy of a specification and used it without relating it to the project.*
- *If the Appellant encountered any problems that were brought forward by the council he would often use the services of his consulting engineer, [omitted]. [omitted] stated that the Appellant relied on his services quite frequently and that the Appellant's drawings were often difficult to understand. This would often require a site visit from [omitted] to clarify the drawings.*

⁷ clause 10 and 11 of the Rules

- *The Projects submitted by the Appellant had no Risk matrixes, however the assessor estimated the Projects to be that of Category 1.*
- *Competency 1 was achieved; however the Appellant's knowledge of Health and Safety and the Construction Contracts Act was not sufficient. Competencies 2, 3, and 4 were not met at either Design (AOP 1 or 2). “*

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

4.3 The Registrar concluded in the following paragraphs:

“22. I reviewed the assessor's assessment report and the Appellant's application.

23. I based my decision on the assessment report for the reasons set out above. I 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 submitted supporting documentation, including:

- a. A reference from an LBP (Site AOP2 and Carpentry) testifying to the quality of the Appellant's drawings.
- b. Engineer correspondence (6 pages) in relation to anchor piles.
- c. Drawings of alterations to [omitted] (5 pages).
- d. A position description for his current role (4 pages).
- e. Miscellaneous drawings from various projects he brought with him to the hearing.
- f. An unsigned reference letter from a building contractor attesting to the quality of plans and clarity of detailing for [omitted].

5.2 The Appellant submitted that he:

- a. Worked as a carpentry apprentice in the construction industry and whilst he has not completed this apprenticeship, did attain his trade certificate and advanced trade certificate qualifications.
- b. Completed a National Diploma in Architectural Technology, level 5.
- c. Has been self-employed in design work for about 10 years.
- d. Had no complaints about his work.
- e. Is currently employed by [omitted] as a [omitted], supervising [omitted].

- 5.3 The Appellant submitted that over the last 10 years, he has designed 10 to 15 new houses and undertaken many additions and alteration projects. The documentation he had produced for these buildings had been accepted and successfully processed by five different councils. He had had no complaints from the council or his clients. He submitted that to the contrary, a number of builders from these projects had since engaged him to carry out design work for them.
- 5.4 The Appellant explained some of the reasons he had not been able to prepare for the assessors interview which may have contributed to the assessor finding him disorganised.
- 5.5 The Appellant defended his practice of using manufacturer's drawings without modification and submitted that the use of standard details from manufacturer's instructions, codes and Standards is not in itself a reason not to grant a license.
- 5.6 The Appellant submitted he did use a consulting engineer where he felt it was in the best interest of his client and that the engineer's comments which were noted in the assessor's report may be attributed to the appellant faxing diagrams which cause some distortions and decreased readability.
- 5.7 The Appellant described how he did not use standard specifications but rather developed his specifications from scratch for each individual project.
- 5.8 In response to Board questioning, the Appellant submitted that he used the council for his checking and quality assurance.

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:

Design Area of Practice 2 Licence:

Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.

- 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.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.4 The Board notes that the Appellants design work experience consisted solely of working for himself and was not continuous over the last 10 years.
- 6.5 The Board asked the Appellant about whether he had many BCA requests for further information (RFI's). The Board noted the Appellant's answers and considers that his lack of peer contact and/or professional associations has limited his opportunity to develop an understanding of the quality and detail of information required.

- 6.6 The Board reviewed a very limited sample of design work submitted as supporting evidence and noted this did not include any specifications. The Board had concerns about some of the Appellant's design documentation, and noted that he cited acceptance by BCA's and the absence of complaints from others as evidence of his competency.
- 6.7 The Board prefers verifiable evidence. Appellants should consider submitting signed references from design consultants and building contractors who know the appellant, are familiar with their work and can attest to the quality of documentation.
- 6.8 The Board considers that the Appellant's qualifications are relevant to the performance indicators and encourages him to develop his design skills in a design office or in a mentoring relationship with an experienced designer.
- 6.9 The Board considers that the Appellant's current work experience is relevant to some of the performance indicators for the Design license competencies and will assist in increasing his competency in these areas.
- 6.10 However, the extent of evidence put before the Board was insufficient to establish that the Appellant meets sufficient of the performance indicators in Competencies 2, 3, and 4.
- 6.11 The Board considered that the Appellant failed to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Design AOP 2 Licence.
- 6.12 The Board may make any other decision the Registrar may make etc.
- 6.13 The Board considered that there was insufficient evidence to grant a Design AOP 1 license.

Board's findings

- 6.14 The Board, therefore, concluded that the Appellant did not meet the competencies requirements for a Design AOP 1 or 2 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 2 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 2013.

Brian Nightingale
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.”*