

BPB Appeal No. A1118

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:	26 February 2013 at [omitted] Appeal heard on the papers
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Appeal heard by:	Colin Orchiston (Presiding Member) Brian Nightingale Board Member Richard Merrifield Board Member Bill Smith Board Member
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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 the Design AOP 2 Licence application and granted a Design AOP 1 licence. The Appellant was notified of his decision by letter dated 3 October 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 24 October 2012, the Appellant lodged an appeal to the Board against the Registrar’s decision.

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 and 3 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 Licence

Competency 2: Manage the building design process.

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

3.4 At the Appellant's request the Board heard the appeal on the papers.

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 22, the following from the Assessor's recommendations:

" ...

- *Prior to moving to New Zealand from the [omitted] in 2006, the Appellant obtained a Higher National Certificate of Building Studies and a HN Diploma in Engineering from [omitted].*
- *The Appellant started his working career working for a company who built new homes as a development rather than for individual clients in the [omitted].*
- *From 2006 to March 2012 the Appellant had been carrying out work as a Senior Architectural Technician and a CAD Design Technician for a number of different architectural and design firms.*
- *March 2012 to present the Appellant is working as a Designer/ Draftsman at [omitted] in [omitted]. His role includes communicating with clients and organising the initial concepts and design.*
- *Project 1 was the Appellant's own home and was a standard [omitted] specification with all the relevant product information added. The assessor placed this project as a Category 1 building.*
- *Project 2 was a re-clad for a [omitted]. The Appellant was responsible for the complete working drawings; however he did not do the specification nor the client contract or the initial design. The Architect handed the project to the Appellant to prepare the building consent information.*
- *The Appellant has a good understanding of the regulatory environment and answered the questions intelligently and knew where to find information should he need it. The Appellant has a good understanding of contracts and site observations.*

⁷ clause 10 and 11 of the Rules

- *The Appellant has not had much opportunity to take projects from the initial client contact and provide a client with a contract for services.*
- *The Appellant does not provide the agreement between the company and the clients, as he is an employee of a company and would not be involved in this process.*
- *The Appellant could not demonstrate initial involvement with a client, taking the brief or providing the client contract. Project 1 was the Appellants' own home and does not fall into the range of dealing with a client as he was the client."*

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

4.3 The Registrar concluded:

- "23. I reviewed the assessors report and the Appellant's application.*
- 24. I based my decision on the assessor's recommendation, for the reasons set out above.*
- 25. However, I was interested in obtaining feedback from [omitted]. The Appellant had applied for a Design AOP 2 licence, and [omitted] would be able to comment about his work on a category 2 building project. I noted that [omitted] is a Registered Architect, who works for [omitted], a company known for complex work.*
- 26. [omitted] advised that the Appellant was not involved in the design brief, preparation of the preliminary design, or contract administration. [omitted] advised that the Appellant was a documentation CAD draughtsperson on the job, and his role was to document as per the sketches provided to him by others. [omitted] advised that he had managed the design process.*
- 27. The assessor reported that the Appellant was involved in sketch proposals, the design process, timelines, budgets, and consent documentation for the [omitted]. Whereas [omitted] advised that the Appellant was a contract CAD draughtsperson.*
- 28. After noting the discrepancy between the assessor's report and the feedback from [omitted] regarding the [omitted], I did not agree with the assessor that the Appellant met Competency 2 at Design AOP 2."*

5.0 Appellant's Submissions

- 5.1 The Appellant submitted written evidence by way of specifications and drawings of 2 projects he had been involved with.

- 5.2 The Appellant also submitted letters in support of his application from two people.

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 License:

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

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

- 6.2 The Board then considered Competencies 2 and 3. 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 in past appeals, it has considered that performance indicators 2.2.3, 2.2.4 and 2.2.5 represent the key differences between Design AOP 1 and AOP 2 for competency 2 and performance indicator 3.2.4 represents the key difference for competency 3. Consequently, in order to obtain a Design AOP 2 licence an applicant or appellant must demonstrate that they meet sufficient of these indicators.

Boards findings

- 6.5 The Board noted that as the Appellant agreed to the hearing on the papers, the Board's consideration was limited to the documentation before it.
- 6.6 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 and 3 for a Design AOP 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 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 received no submission from the Appellant on whether or not the Appellant wished his name to be published.

- 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.

Colin Orchiston
(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.”*