

BPB Appeal No. A1143

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:	21 May 2013 at [omitted]
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Appeal heard by:	Colin Orchiston Richard Merrifield Brian Nightingale	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) 2 Licence under s287 of the Act and the Building Act 2004¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 27 November 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 January 2013 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 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 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 Area of Practice (AOP) 1 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 1, 2, 3 and 4 for a Design AOP 1 Licence.

Design Licence Competencies:

- Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.*
- Competency 2: Manage the building design process.*

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

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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

“... ”

- *[The Appellant] originally commenced working in 1963 and was involved in the electrical construction industry.*
- *[The Appellant] then started his own business in partnership with another and he formed [omitted], based in [omitted] and [omitted], carrying out work on residential projects.*
- *In 1988 [the Appellant] formed his own building and design business based in [omitted] and [omitted] carrying out work in the residential sector.*
- *In 1996 [the Appellant] moved to [omitted].*
- *From 1997 to 1999 [the Appellant] returned to [omitted] and commenced a build and design business.*
- *From 2000 to 2004 [the Appellant] was working in the real estate industry.*
- *From 2004 to present [the Appellant] has returned to [omitted] and continued working in the build and design sector carrying out work on residential projects.*
- *For Project 1 the documentation that was provided was a copy of the building consent drawings. The drawings were not of a reasonable quality and were manually drawn with some aspects drawn to what appeared to be freehand.*
- *There were minimal details for flashings provided and it was apparent there was weather tight issues around the windows and doors.*
- *No other supporting documentation, such as specifications, H1 calculations and bracing elements was provided for Project 1.*

⁷ clause 10 and 11 of the Rules

- *There was no information provided regarding contract for services, notes, sketches and design briefs for Project 1.*
- *A structural engineer was engaged on Project 1 but the engineer undertook all of the construction details including a lot of the timber framed work and the bracing design for the works.*
- *The documentation for Project 2 was extremely minimal and had no support information for [the Appellant's] consultants. The detail contained in the drawings was poorly drawn and was only minimal in the terms of what was required by the codes at that stage.*
- *A resource consent was required for this project, which was undertaken back in 2003 as some revisions to this were required under the building consent application for amendments.*
- *Both projects that were provided were extremely [sic] difficult to follow due to the continuity of the work provided and the lack of support information from discussions with the clients and work undertaken during the design process.*
- *The assessor requested further information, which [the Appellant] was able to do. However the information received was inadequate and did not support [the Appellant's] licence application."*

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

4.3 The Registrar concluded:

- "21. I reviewed the assessors report and [the Appellant's] application.*
- 22. I based my decision on the assessor's recommendation, for the reasons set out above.*
- 23. I did not agree with the assessor's recommendation that [the Appellant] demonstrated the following competencies:*
 - *Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.*
 - *Competency 2: Manage the building design process."*

5.0 Appellant's Submissions

- 5.1 In response to the Board's questions, the Appellant confirmed that he was seeking an AOP 1 design licence and not the AOP 2 as per his original application.
- 5.2 The Appellant, with reference to the Assessor's report, described issues therein which he considered were inaccurate or did not adequately recognise his competence and experience. In particular, he refuted the Assessor's comments relating to the extent of bracing calculations, H1 calculations, framing documentation, and input by the structural engineers.

- 5.3 The Appellant indicated that the core of his business had been working as a builder, but that he had been undertaking house designs for many years, and in each case those projects were also built by him. In the foreseeable future his intention was to continue as a part time designer producing documentation for construction by others. He acknowledged that the design documentation provided by a designer for construction by others needed to be more rigorous than that required for a design/build project.
- 5.4 The Appellant provided some photos, two sets of drawings, and one sample specification for two complex house projects that he had undertaken as a design/builder. Both projects were older than 5 years. Whilst one of the projects was an alteration, both projects appeared to be Category 2 buildings. For both projects he had undertaken the initial site investigations, the client brief, sketch designs, working drawings, liaison with consultants and compliance requirements, and construction through to handover for occupation. It was noted that the specification was not the original used for construction, but had been written expressly in response to comments by the Assessor.
- 5.5 Further evidence was provided in response to questioning by the Board.
- 5.6 In respect of Competency 1, the Appellant described the regulatory and legal requirements, the roles and responsibilities of others, and the key features of the LBP scheme.
- 5.7 In respect of Competency 2, the Appellant described his experience as a builder undertaking the occasional design of housing.
- 5.8 In respect of Competency 3, the Appellant described his usual way of undertaking preliminary site investigations, developing the preliminary layouts, and discussing costs and timelines with clients. He described his approach to design issues and construction requirements.
- 5.9 In respect of Competency 4, the Appellant referred to his extensive experience as a builder, and provided the drawings and specifications (referred to above) for review by the Board.

6.0 Board's consideration

- 6.1 The Board considered Competencies 1, 2, 3 and 4 for a Design AOP 1 Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.2 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.3 In respect of Competency 1, the Board was not satisfied that performance indicator 1.1.4 was adequately demonstrated, and considered that the Appellant needs to improve both his knowledge and use of adequate conditions of engagement in order to provide the necessary protection for both clients and designer.

- 6.4 In respect of Competency 2, the Board was satisfied that the Appellant demonstrated a sufficient understanding of the requirements described in the performance indicators.
- 6.5 In respect of Competency 3, the Board was satisfied that the Appellant demonstrated a sufficient understanding of the requirements described in the performance indicators.
- 6.6 In respect of Competency 4, the Board has in past appeals decided that the issue of a Building Consent is not, of itself, proof that the design documentation has met the required standards. The Board is also aware that the standard of documentation now required for a building consent would be substantially more than was provided for the projects submitted to the Board. Whilst the Appellant's drawings had proven adequate for a Building Consent and for construction of complex buildings, the drafting standards were not as would reasonably be required of a designer now, and the extent of detailing and specification was inadequate to establish a sound contract for construction by others.
- 6.7 However, in response to the Board's questions, the Appellant was able to identify all the details necessary in a complex project. Accordingly, whilst the quality of the design documentation submitted to them was less than would normally be sought, the Board considered that this was offset by the Appellant's in-depth construction knowledge and experience in building contracts. The Board would encourage the Appellant to make the best use of the available digital resources available to improve both his drawings and specifications.

Board's findings

- 6.8 The Board considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 1, 2, 3 and 4 for a Design AOP 1 Licence.

7.0 Board's Decision

- 7.1 Pursuant to s335(4) 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 18th day of June, 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.”*