

**BPB Appeal No. A1144**

**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:	9 April 2013 at [omitted]
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Appeal heard by:	Colin Orchiston (Presiding Member) Brian Nightingale Board Member Bill Smith Board Member Richard Merrifield Board Member
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Appearances by:	The Appellant [omitted]  The Registrar, Mark Scully, was available by telephone but was not required to attend.
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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 2007<sup>1</sup> (“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 18 December 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 23 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.<sup>2</sup> 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 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup> however the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:  
  
The grant of a Design Area of Practice 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.

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

<sup>2</sup> S286 of the Act and rule 4 of the Rules.

<sup>3</sup> Clause 4(2) of the Rules

<sup>4</sup> S330(1)(a) of the Act.

<sup>5</sup> S335(2) of the Act

<sup>6</sup> S335(4) of the Act

**Design Licence competencies:**

- 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>7</sup>. 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 23, the following from the Assessor's recommendations:

" ...

- *[The Appellant]* completed his New Zealand Certificate in Architectural Draughting at [omitted] in 2000.
- In January 2001 *[the Appellant]* got a job as an Architectural Technician with [omitted]. His role involved completing working drawings for new homes, alterations and additions.
- From October 2001 to July 2003 *[the Appellant]* worked as an Architectural Technician at [omitted] in [omitted]. His role involved preparing working drawings for new homes and [omitted] to obtain a building consent.
- From July 2003 to June 2005 *[the Appellant]* started working as an Architectural Technician at [omitted] in [omitted]. His role involved some design work for large apartment blocks, residential homes and [omitted].
- June 2005 to July 2006 *[the Appellant]* spent time in the [omitted] and [omitted]. He did not carry out any draughting work while he was overseas.
- From October 2006 to November 2011 *[the Appellant]* worked at [omitted] as an Architectural Designer and Draftsperson. His role included preparing working drawings on both renovations and new residential projects to obtain building consent, designing new homes and training new staff.
- From May 2012 to present *[the Appellant]* has been employed at [omitted] in [omitted]. His role involves working on both new and alteration projects as an Architectural Technician and Designer.
- Project 1 was a very large home, which was well designed. The drawings for the project however were a little light for such a large and complex home.

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<sup>7</sup> clause 10 and 11 of the Rules

- The specific detailing for the project was sparse and there were issues with an internal gutter that was not resolved well.
- There was no specific specification supplied for the waterproofing of a very large subterranean wall in the project.
- *[The Appellant]* had the project listed as being AOP 2 however the risk matrix indicated that it was actually an AOP 1 project. This showed *[the Appellant's]* lack of knowledge of the building categories.
- The specification for this project was prepared using the Masterspec template. However not much of the specific products were filled out and the specification was not edited well.
- *[The Appellant]* listed Project 2 as being AOP 2; however the risk matrix was 3 which made it an AOP 1 project.
- The drawings were relatively simple and served the purpose for a reinstatement project.
- The specification for the project was poorly edited with little specific information.
- *[The Appellant]* produced a set of drawings for an additional project, which was also a fire reinstatement. These drawings were very simple and served the purpose, however they were by no means fully detailed.
- The additional project had a higher risk matrix but did not demonstrate any better competency than the two projects that were provided.
- *[The Appellant]* was unable to demonstrate knowledge of contracts and contract administration. He could, however provide evidence of New Zealand Standards contracts and how and when they would be used.
- *[The Appellant's]* documents were sufficient to demonstrate competence for simpler projects and met the level required for AOP 1.

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

4.3 The Registrar concluded:

- “24. *I reviewed the assessors report and [the Appellant's] application.*
25. *I based my decision on the assessor's recommendation, for the reasons set out above.*
26. *I did not agree with the assessor's recommendation that [the Appellant] met Competency 3: Establish design briefs and scope of work and prepare preliminary design as the projects that were provided were only Category 1 buildings.”*

## **5.0 Appellant's Submissions**

- 5.1 The Appellant and his witness [omitted] appeared before the Board in [omitted] on 9 April 2013. [omitted] is the Managing Director of [omitted] for whom the Appellant provides draughting services on a contract basis.
- 5.2 The Appellant provided the Board with printed copies of submissions previously included in the appeal papers, and further submissions were made orally. Specific reference was made to a project currently under construction.
- 5.3 The Appellant referred to the assessor's report, and acknowledged that he had not provided sufficient information to the assessor at the time of the interview.
- 5.4 The Appellant responded to questions from the Board about his knowledge in respect of the performance indicators in competencies 2, 3 and 4.
- 5.5 The Board took into account that a hearing difficulty was affecting the Appellant's responses.
- 5.6 With reference to a current project the Appellant described his involvement in the initial design process, client briefing, design development, and preparation of documentation for building consent application and construction.
- 5.7 The Appellant advised that his involvement during the construction process was generally limited to interpretation of the design documentation. He indicated that whilst he had an awareness of construction observation and administration neither he nor his current employer were engaged to provide those services.

## **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:

*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 has in previous appeals considered the difference between AOP 1 and AOP 2, and the consideration required in respect of performance indicators 2.2.3, 2.2.4, 2.2.5, 3.2.4 and 4.2.6.
- 6.5 In response to the Board's questions, the Appellant indicated an awareness of the principles and concepts involved in procurement, observation, and contract administration. He did not satisfy the Board that he had a sufficient depth of understanding in respect of these particular performance indicators.

- 6.6 The Board considered that the Appellant did not provide evidence 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.

*Board's findings*

- 6.7 The Board, therefore, concluded that the Appellant did not meet the competency requirements 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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant did not express a preference.
- 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.

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Colin Orchiston  
(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.”*