

**BPB Appeal No. A1180**

**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 July 2013 at [omitted] Heard on the papers at Appellant's request	
Appeal heard by:	Brian Nightingale Colin Orchiston Richard Merrifield	Presiding Member Board Member Board Member

## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Design Area of Practice (AOP) 2 Licence under section s287 of the Building Act 2004 (“the Act”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application for Design AOP 2 and instead granted Design AOP 1 and notified his decision by letter dated 15 April 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 18 April 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>1</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>2</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>3</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>4</sup> however the Board will not review matters outside the scope of the appeal<sup>5</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.

### Design AOP 2 Licence Competencies:

- |                      |  |
|----------------------|--|
| <i>Competency 2:</i> | <i>Manage the building design process.</i>                                       |
| <i>Competency 3:</i> | <i>Establish design briefs and scope of work and prepare preliminary design.</i> |
| <i>Competency 4:</i> | <i>Develop design and produce construction drawings and documentation.</i>       |

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<sup>1</sup> S286 of the Act and rule 4 of the Rules.

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

<sup>3</sup> S330(1)(a) of the Act.

<sup>4</sup> S335(2) of the Act

<sup>5</sup> S335(4) of the Act

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 recommendation<sup>6</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 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

“... ”

- *[The Appellant] has an extensive work history that has largely been in a building regulatory role. This role ranged from Building Compliance Officer for various District Councils to Building Controls Team Leader of the residential consent team at the [omitted].*
- *In July 2012, [the Appellant] was employed as a Contracts Manager for a medium sized design and build company in [omitted]. Due to his construction detailing and regulatory knowledge, [the Appellant] has been given the responsibility for the design of new buildings and alterations. This role included the preparation of building consent documentation for the repair of commercial and residential buildings following the [omitted].*
  - *[The Appellant] provided examples of the following for the projects he submitted:*
    - *Conditions of appointment issued by his firm.*
    - *Briefing checklists.*
    - *Preliminary design drawings.*
    - *Detailed design drawings for consent, which he had supervised.*
    - *Specifications, which he had assembled using the firm's template.*
- *[The Appellant] showed that he had an adequate knowledge, in relation to detailed design components of the projects, of project inception, pre-design, and detailed design aspects of project development.*
- *[The Appellant's] experience of concept design and preliminary design was limited to only a few residential and simple commercial buildings for which he had been involved since commencing his current employment.*
- *The concept design sketches [the Appellant] submitted were limited to rudimentary floor planning layouts and were not of a level of execution sufficient to meet the competency expected for a Design AOP 2.*
- *[The Appellant] submitted design brief checklists he was using for more complex projects he is now becoming involved with.*
- *[The Appellant's] experience of contract administration was very limited. He was unsure what Conditions of Contract the firm used and was vague regarding other Standard Conditions of Contract available to the industry.*

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<sup>6</sup> clause 10 and 11 of the Rules

- *[The Appellant] is involved with the firm's Project Managers in sorting out site-specific contractual issues.*
- *With [the Appellant's] background in the regulatory control areas of the building industry, he responded accurately to questions regarding the regulatory framework.*
- *[The Appellant] showed that he had adequate knowledge of the areas of practice from pre-design to consent application but has inadequate experience of preliminary design methods for more complex building designs.*
- *While [the Appellant] has a good knowledge of construction detailing, his hands on experience of detailed design documentation production was not considered sufficient to meet the level of competency required for a Design AOP 2."*

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

4.3 The Registrar concluded:

*"21. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.*

*22. I reviewed the assessors report and [the Appellant's] application.*

*23. I based my decision on the assessor's recommendation, for the reasons set out above.*

*24. [The Appellant] has provided sufficient evidence to demonstrate current competency and work repeatability at the Design AOP 1 level. This information has been confirmed by the technical referees provided."*

## **5.0 Appellant's Submissions**

5.1 The Appellant chose to have the hearing on the papers.

5.2 The Appellant's submission addressed each of the performance indicators and included documentation in support of his submissions.

## **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Design AOP 2 Licence:

### **Design AOP 2 Licence Competency:**

*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 for a Design AOP 2 Licence. 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 Because the Appellant did not attend the hearing the Board did not have the opportunity to question him on his experience.
- 6.5 The Board referred to previous appeals A1095, A1118 and A1144 and noted that where an Appellant has been granted a Design AOP 1 Licence and is now seeking a Design AOP 2 Licence, the Board will be focused on the performance indicators that represent the key differences. To obtain a Design AOP 2 licence the Appellant should also demonstrate that the performance indicators have been met in respect of category 2 buildings.
- 6.6 Whilst the Appellant endeavoured to address each of the performance indicators, in the Board's view there was insufficient evidence that the Appellant had demonstrated the specific issues that distinguished AOP 1 from AOP 2.
- 6.7 In respect of Competency 2:
- 2.2.3 The Board considers the Appellant did not provide sufficient evidence to demonstrate that this performance indicator was met.
  - 2.2.4 The Board considers the Appellant did not provide sufficient evidence to demonstrate that this performance indicator was met.
  - 2.2.5 The Board was satisfied that the Appellant provided sufficient evidence to demonstrate this performance indicator was met.
- 6.8 In respect of Competency 3:
- 3.2.4 The Board was satisfied that the Appellant provided sufficient evidence to demonstrate this performance indicator was met.
- 6.9 For Competencies, 2, 3 and 4 the Board considers the Appellant did not provide sufficient evidence in respect of category 2 buildings. Accordingly it considered that he failed to demonstrate that he met sufficient of the performance indicators for these competencies.
- 6.10 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, 3 and 4 for a Design AOP 2 Licence.

*Board's findings*

- 6.11 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 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 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 11 day of July 2013

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Brian Nightingale  
(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."*