

BPB Appeal No. A1197

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:	25 February 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Brian Nightingale, Board Member Colin Orchiston, Board Member Mel Orange, Board Member
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Appearances by:	[The Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Design Area of Practice (AOP) 2 Licence under s287 of the Act and the Licensed Building Practitioners Rules 2007¹ (“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 September 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 4 October 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 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 1 and 4 for a Design AOP 2 Licence.

Design AOP 2 Licence Competencies:

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.

¹Incorporating amendments for 2008, 2009 and 2010.

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

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

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:

- "In 1985 [the Appellant] started work as an apprentice carpenter, and completed his Advanced Trade Certificate in Carpentry in 1987.
- [The Appellant] formed his own company, [omitted], in 1992. He undertakes the design work and manages the required consent documentation.
- [The Appellant] provided two projects, both straw bale homes which had risk matrixes of 6 and 5 respectively. [The Appellant] designed each home, and for Project 1 he undertook all documentation necessary for design to engineering and consent documentation. For Project 2 he worked from design through to working drawings documentation and completed on site observation. All structural work, including bracing, for these projects was provided by a consultant engineer.
- The client referee spoke very highly of [the Appellant] and his work on the referee's home. The referee confirmed that [the Appellant] had developed all the solutions, carried out all the design work and consent documentation including complex heat exchange units, passive ventilation and structural components.
- Through discussion with the assessor [the Appellant] showed that he did meet minimum standards of knowledge for the building regulations and contract knowledge. However he had limited knowledge of the Resource Management Act, and did not display evidence that, when working outside his individual competence, he would seek out expertise to ensure the final product would meet the relevant alternate solutions requirements.
- While [the Appellant] displayed a strong level of knowledge and experience in regards to straw bale housing, the documentation presented for this assessment did not meet the requirements of the NZ Building Code Alternative Solution process.
- During the face to face meeting with the assessor, [the Appellant] did not provide hard copies of his design documentation for review, and instead provided the assessor with digital versions of the design documents to view later.
- [The Appellant] displayed the minimum level of competency necessary to show his management of the building design process.
- The design documentation provided to the assessor show that [the Appellant] establishes design briefs. He prepares sufficient preliminary designs for his clients, although these are freehand sketches and as such, are not presented in a particularly professional style or manner. He also determines the scope of

⁷ clause 10 and 11 of the Rules

work involved, even if the design principles in terms of recommendations in working with straw bale design principals are somewhat vague.

- The design documentation provided by [the Appellant] showed technical inaccuracies and mislabelled details as E2 Acceptable Solutions, which they were not. The processes and documents that [the Appellant] provided to show BCA compliance for Alternate Solutions did not contain sufficient evidence that the appropriate management or recommendations had been made.
- The consultant referee said [the Appellant] has some good design ideas, and sometimes he had difficulties communicating the end result of the structure and the design through engineering documents. The referee would not comment further on [the Appellant's] work outside of his own involvement in undertaking the structural design and detailing work on the projects.
- The projects [the Appellant] presented did not comply with the Acceptable Solution requirements of the NZ Building Code.
- [The Appellant's] documentation and compliance process does not support a sufficient range of development of design or production of construction drawings and documentation to support Design AOP 2, or a recommendation for Design AOP 1."

4.3 The Registrar concluded:

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

- "I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- Upon review of the assessor's report and [the Appellant's] application, I discussed the recommendation with the Registrar and senior colleagues before making the decision.
- Our discussion concluded that the standard of regulatory knowledge expected of a Design LBP is necessarily higher than that of the trade licence classes. As a result, I concluded that it was not inconsistent that [the Appellant] had been assessed as meeting the requirements for Competency 1 in his Carpentry and Site licence applications, but had been assessed as not meeting Competency 1 for Design.
- Our discussion considered whether the assessor should have recommended that [the Appellant] be granted the Design 1 area of practice, given that he had applied for Design area of practice 2. I concluded that the evidence from the assessment clearly showed that [the Appellant's] design experience was limited to straw bale houses, and that he lacked the knowledge and experience of Category 1 buildings expected of a Design 1 LBP.
- I based my decision on the assessor's recommendation and 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 provided substantial supporting documentation with his appeal and tabled display photographs of various projects he had designed and or built.
- 5.2 In response to the Board's questioning, the Appellant provided information on his background in design and his knowledge of the required competencies.

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 AOP 2 Licence Competencies:

- Competency 2: Manage the building design process.*
Competency 3: Establish design briefs and scope of work and prepare preliminary design.

- 6.2 The Board then considered Competencies 1 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.

Board's findings

- 6.4 The Board concluded that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 1 and 4 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 reverse the Registrar's decision and licence [the Appellant] with a Design AOP 2 Licence.**
- 7.2 **The Board directs the Registrar to issue a Design AOP 2 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, 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 28 February 2014



Chris Preston
(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."*