

BPB Appeal No. A183

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:	27 th June 2017 - Auckland
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Appeal heard by:	Chris Preston Mel Orange Bob Monteith Robin Dunlop
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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 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 25th October 2016. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 21st March 2017 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 of the Rules. In determining whether a person meets a Competency, regard must be given to the extent to which the person meets the Performance Indicators set out for that competency in Schedule1³.
- 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 Licence (AOP 2)

- 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 & 4 for a Design Licence (AOP 2).

Design Licence AOP 2 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

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 **21**, the following from the Assessor's recommendations:

- The Appellant only supplied one project that was categorized as appropriate for assessment in area of practice 2. Two other projects were categorized as appropriate for area of practice 1.
- The Appellant was able to demonstrate most competencies required and that "certainly AOP 1 was well demonstrated"
- The referee's spoke very highly of the appellant and his quality of work.
- The employer of the appellant stated that he "did not do design work as there were other staff that did that"
- The assessor noted "there were some small gaps in his work which was why I have recommended AOP 1 at this stage" He did demonstrate this with further evidence. However for now I am comfortable with AOP 1 level license.

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.
- I reviewed the assessor's report and [the appellant's] application.
- I based my decision on the assessor's recommendation, for 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 included with his appeal

- Five references; and
- Examples of previous work – plans and specification.

5.2 On the day the Appellant brought with him documents outlining Competencies 2, 3 and 4. The documentation included:

- Competency 2 - examples of Quality Assurance Checklists and Engaging Consultants;

⁷ clause 10 and 11 of the Rules

- Competency 3 - examples of Taking the Design Brief, Initial Design and Re-Design after Client Input; and
- Competency 4 - examples of Project Correspondence, H1 Calculations, Truss Design, Wastewater Design, Stormwater Design, Structural Engineering and Specification.

5.3 The Board asked questions of the Appellant and received oral submissions from him.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency 1 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

Competency 4: Develop design and produce construction drawings and documentation

6.2 The Board then considered Competencies 2, 3, & 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 had **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3 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.

Signed and dated this 3rd day of July 2017



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.”*