

BPB Appeal No. A1290

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:	26 th September 2017 – Holiday Inn Auckland Airport
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Appeal heard by:	Richard Merrifield Mel Orange Brian Nightingale Faye Pearson-Green
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Appearances by:	The Appellant
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1.0 Introduction

- 1.1 The Appellant of Auckland applied for a Design 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 14 July 2017. 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 August 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 2 Licence or alternatively a Design 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 3, 4 & 5 for a Design 2 Licence or alternatively for a Design 1 Licence.

Design 1 and 2 Licence Competencies:

Competency 3: Establish design briefs scope of work and prepare preliminary design.

Competency 4: Develop design and produce construction drawings and documentation.

Competency 5: Manage construction phase.

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

- The Appellants skills and experience related to building management and administration, rather than design and client liaison.
- The Appellant was not able to demonstrate his ability to "prepare design and working drawing documentation, manage design process and work with clients and consultants alike in achieving a building project".

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 a Covering Letter, copy of the Auckland City Council Reclad Inspector Job Description, Unitech Bach of Applied Tech documents, Control Course documents and a set of plans.

5.2 The Appellant submitted three references at the hearing.

5.3 Within the Appellant's submissions he made reference to having a qualification and this should be recognised as a qualification for the purposes of his original application for a licence. The Board clarified that under section 3 of the Rules a "recognised qualification" is one that is listed in Schedule 2 of the Rules. Within Schedule 2 there are no recognised qualifications for a Design licence.

5.4 The Appellant also made reference to Section 14D of the Act. It was clarified to the Appellant that Section 14D must be read in conjunction with Section 14A of the Act where it states the provisions in Sections 14B to G of the Act are for guidance only.

5.5 The Board asked questions of the Appellant and received oral submissions.

⁷ clause 10 and 11 of the Rules

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 1 & 2 for the Design 2 licence:

Design 2 Licence Competencies:

Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.

Competency 2: Manage the building design process.

- 6.2 The Board then considered Competencies 3, 4 & 5 for a Design 1 and/or 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 did not demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 3, 4 & 5 for a Design 1 or for a Design 2 Licence.
- 6.5 The Appellant did display an adequate knowledge of some of the performance competencies in relation to current projects that he is undertaking. He did not, however, display or demonstrate sufficient experience or knowledge for the majority of the performance indicators and/or competencies. In particular he did not demonstrate that he met sufficient Performance Indicators in the following areas:
- a) Design process - design brief, concept plans and costings;
 - b) Resource Consent and Town Planning issues;
 - c) Preparation of working drawings associated specifications. Dealing with specialized consultants;
 - d) Building Consent application process; or
 - e) Contract documentation and contract administration.

- 6.6 The Board encourages the Appellant to seek further practical experience working for a licensed designer or consider whether, with the skills he has demonstrated, a Site licence is more appropriate for the type of work he is undertaking.

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 2 Licence.**
- 7.2 **The Board also considered a Design 1 Licence as requested by the appellant and the decision was made not to license the Appellant with a Design 1 Licence as sufficient evidence was not provided to support a Design 1 Licence.**

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 5th day of October 2017



Richard Merrifield
(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.”*