

**BPB Appeal No. A1313**

**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 [Omitted] 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: | 12 December 2018 - Auckland |
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| Appeal heard by: | Chris Preston<br>Robin Dunlop<br>Faye Pearson-Green<br>David Fabish |
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| Appearances by: | Appellant |
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## 1.0 Introduction

- 1.1 The Appellant of [Omitted] applied for a Design Licence (Area of Practice (AOP) 2) Licence under s287 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 Appellant’s application and notified his decision by letter dated 13 September 2018. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 16 October 2018 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 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 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 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 1, 2, 3, 4 & 5 for a Design Licence.

### **Design Licence Competencies:**

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

*Competency 2: Manage the building design process.*

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

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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

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

*Competency 5: Manage construction phase design.*

#### **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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph **18**, the following from the Assessor's recommendations:

- The Appellant presented a lot of evidence that did not demonstrate the required competencies for Design areas of practice one or two.
- In summary, her drawings had deficiencies and the specifications were of poor quality.
- Her knowledge of the regulatory provisions of the LBP Scheme were questionable at the time of the assessment, as was her knowledge of contract and contract administration. She provided further evidence in these respects after the assessment.
- She demonstrated competency 3 in view of the assessor.

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 her appeal

5.1.1 Cover Letter

5.1.2 List of Building Consents obtained

5.1.3 Three projects providing evidence of competencies 2-5

5.1.4 CV

5.1.5 References

5.1.6 Evidence of training

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

## 6.0 Board's consideration

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the Competencies for the Design (AOP 2) licence:
- 6.2 The Board then considered Competencies 1 2 3 4 & 5 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 she met sufficient Performance Indicators to satisfy the requirements of Competencies 1 2 3 4 & 5 for a Design AOP 2 Licence.
- 6.5 The Board recommended the Appellant continues to upskill and maintain current knowledge of the Building Act and the Building Code and put in place quality control and oversight procedures given that the Appellant is a sole practitioner.

## 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 [Omitted] with a Design (AOP 2) Licence.
- 7.2 The Board directs the Registrar to issue a Design (AOP 2) Licence to [Omitted] 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 18<sup>th</sup> day of December 2018



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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.”*