

**BPB Appeal No. A1324**

**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:	26 February 2020 Holiday Inn Auckland Airport 2 Ascot Road, Airport Oaks Auckland
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Appeal heard by:	Mel Orange (Presiding Member) Richard Merrifield Faye Pearson-Green Robin Dunlop David Fabish
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Appearances by:	<b>[Omitted]</b> Support person: <b>[Omitted]</b>
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## 1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Auckland applied for a Design Licence Area of Practice 2 (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 26 July 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 8 October 2019 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 Area of Practice 1 (AOP 1)*

- 3.3 The Board confirmed with the Appellant that, notwithstanding her original application for a Design AOP 2 Licence, the relief she was seeking was the issue of a Design AOP 1 Licence. The Appellant confirmed that she was seeking an AOP1 licence.
- 3.4 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 1 Licence. Those competencies are:

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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

**Design (AOP 1) 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*

**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:

- *[Omitted]* provided three projects. None met the competency required for Area of Practice (AOP) 1 or 2 Design.
- The projects were not of appropriate complexity for an AOP 2 application.
- The drawings provided had various issues, including low quality and resolution, lack of cross referencing, missing specifications, floor plans that did not have wall dimensions etc. The projects therefore did not meet the competencies for Design AOP 1 or 2.
- *[Omitted]* was well supported by her referees. In my opinion the Referees do not have much idea on the quality of documentation that she provides, as they all said the documentation was good.
- When asking questions about the regulatory environment she was able to answer some questions straight away, but other questions she could not answer at all
- *[Omitted]* was unable to offer any evidence of knowledge of construction contracts.

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 *[Omitted]* application.
- I reviewed the assessor's report and *[Omitted]* 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."

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

## **5.0 Appellant's Submissions**

- 5.1 The Appellant provided a written submission together with a portfolio of designs and associated documents for a variety of residential dwellings. The designs presented were, in the main, dwellings that would have a risk matrix of greater than 12.
- 5.2 The Appellant appeared with her husband [Omitted]. Together they run a consultancy business called [Omitted] which provides resource consent and building consent services to customers and as part of a development business that the Appellant and her husband run. The Appellant provides the design services under the supervision of a Licensed Designer.
- 5.3 The Board asked questions of the Appellant relevant to Competencies 1 and 4 and in respect of the documentation she had provided.
- 5.4 The Appellant answered the questions about Competency 1 correctly and with confidence. The Board had no concerns as regards Competency 1.
- 5.5 The Board questioned the Appellant about the designs she had presented focusing on areas where compliance with the Building Code were, from the plans provided, unclear. The Appellant's answers showed a reasonable level of knowledge. There were, however, areas where further development of that knowledge is required.

## **6.0 Board's consideration**

- 6.1 The Board noted that Competencies 1 and 4 for a Design AOP 1 Licence can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.2 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency. The standard of proof is that of the balance of probabilities.

### *Board's findings*

- 6.3 The Board decided that the Appellant had provided sufficient evidence to demonstrate, on the balance of probabilities that she met sufficient performance indicators to satisfy the Board she met the requirements of Competencies 1 and 4 for a Design AOP 1 Licence.
- 6.4 The Appellant should note that the decision that she met sufficient performance indicators for Competency 4 was made by a narrow margin. The Appellant should take note of, and adhere to the following cautions:
  - The Appellant must work within her competency. She needs to know and understand her limitations. Section 314B of the Act stipulates that a Licensed Building Practitioner must not misrepresent their competency or work outside of it. A breach of section 314B is a disciplinary offence. This means that the Appellant must be supervised by a Design AOP 2 or 3 Licence holder if she develops design with a risk matrix of greater than 12 or works outside of her personal competency;

- The Appellant needs to continue to develop her knowledge of the Building Code, of acceptable solutions such as NZS 3604:2011 to meet the requirements of the Code, and of alternative methods to achieve compliance; and
- The Appellant should consider joining a member organisation that provides support and training for design professionals. This will assist her in her continuing professional development as a Licensed Building Practitioner.

## 7 Board's decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision. It has decided that it will grant [Omitted] a Design Area of Practice 1 Licence.
- 7.2 The Board directs the Registrar to issue a Design Area of Practice 1 Licence to [Omitted] as soon as practicable.

Signed and dated this 5<sup>th</sup> day of March 2020




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Mel Orange  
(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.”*