

BPB Appeal No. A1327

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 [REDACTED] [REDACTED] against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	29 January 2020, in Auckland
-------------------------------	------------------------------

Appeal heard by:	Richard Merrifield (Presiding Member) Mel Orange Robin Dunlop Faye Pearson-Green David Fabish
------------------	---

Appearances by:	[REDACTED] (Appellant)
-----------------	------------------------

1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Raglan applied for a Design Area of Practice (“AOP”) 1 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 19 September 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 10 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.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 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 Licence AOP 1*
- 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 and 3 for a Design Licence AOP 1.

Design Licence Competencies:

Competency 2: Manage the building design process

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

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 Appellant] has some design and documentation knowledge, however it is limited and I don't believe from the evidence provided that she is able to undertake the full scope of work on her own accord without supervision.
- Discussions with her referee / employer effectively confirmed that while [the Appellant] has reasonable skills she could not undertake work on a project without supervision.
- There was not sufficient evidence and repeatability to recommend that a licence is offered.

4.3 The Registrar concluded:

- 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 client and employer references and samples of previous work with her appeal.

5.2 The Board asked questions of the Appellant.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies 1 and 4 for the Design licence:

Design Licence AOP 1 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.

⁷ clause 10 and 11 of the Rules

- 6.2 The Board then considered Competencies 2 and 3 for a Design (AOP 1) 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 she met sufficient Performance Indicators to satisfy the requirements of Competencies 2 and 3 for a Design Licence AOP 1.

7.0 Board's Decision

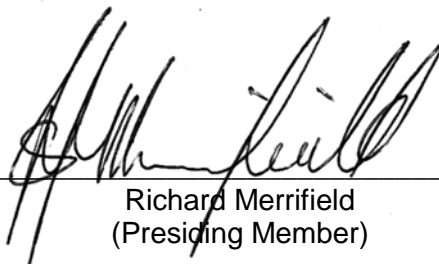
- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [REDACTED] with a Design (AOP 1) Licence.

- 7.2 The Board directs the Registrar to issue a Design (AOP 1) Licence to [REDACTED] 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 3rd day of February 2020



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.”*