

BPB Appeal No. A1331

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] against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	4 March 2020, in Auckland
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Appeal heard by:	Mel Orange, Legal Member (Presiding) Richard Merrifield, LBP, Carpentry Site AOP 2 Robin Dunlop, Retired Professional Engineer Bob Monteith, LBP Carpentry and Site AOP 2 Faye Pearson-Green, LBP Design AOP 2
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Appearances by:	[REDACTED]
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1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland applied for a Design (Area of Practice (“AOP”) 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 20 November 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 December 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 (AOP 1) License

- 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 2-4 for a Design (AOP 1) License.

Design (AOP 1) 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.

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 option of offering a lower area of practice was considered.

While the documents provided at the assessment were of a standard where a Design 1 license could be offered, there were extensive limitations in the process where neither of the projects were taken from the original client meeting and design brief, through the design process and then the completion of consent application documentation.

An important part of the competencies around engagement, dealing with clients, completing the full design process and work around consent compilation was not shown.

The evidence produced verified that to me as well as a complete discussion with his employer referee, who advised that he has limited or no skills or participation in these areas.

[The Appellant] did confirm that his main work is in preparing working drawings for consent as part of the companies process system and often has little involvement outside this area"

- 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 a large number of building consent documents with his appeal. He also provided evidence of his qualifications.
- 5.2 The Board asked questions of the Appellant covering Competency 2-4 for Design (AOP 1).

⁷ 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 Competencies 2 - 5 for the Design (AOP 2) licence, but noted that the Appellant was seeking a Design (AOP 1) licence.
- 6.2 The Board then considered Competencies 2 - 4 for a Design (AOP 1) License. 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 **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2 - 4 for Design (AOP 1).
- 6.5 The Appellant failed to satisfy the Board that he had sufficient knowledge of building compliance documentation, standards and acceptable solutions. Whilst he displayed skills in drawing he lacked knowledge in the reasons why various design details had to be done in a specific manner. In particular he lacked an in depth knowledge of E2/AS1 and NZS 3604:2011. It was also noted that he was undertaking designs which were outside of his competence and that of his supervisor.
- 6.6 The Board recommends that he gains further experience prior to reapplying.
- 6.7 The Board did note that the Appellant does have a formal qualification. Whilst it took this into consideration the Board notes that there are no recognized qualifications within the Rules for a Design license and that, notwithstanding the Appellant still failed to satisfy the Board that he met the Competency criteria.

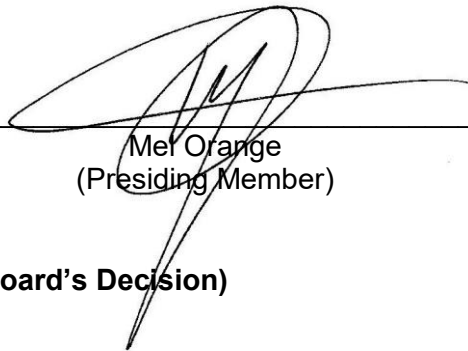
7.0 Board's Decision

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [REDACTED] with a Design (AOP 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 10th day of March 2020



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.”*