

BPB Appeal No. A1332

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

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| Date and location of hearing: | 5 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 Faye Pearson-Green, LBP Design AOP 2 |
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| Appearances by: | [REDACTED] [REDACTED] (Support person) [REDACTED] (Witness) |
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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 11 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 11 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 2) 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 4 and 5 for a Design (AOP 2) License.

Design (AOP 2) Licence Competencies:

- Competency 4: Develop design and produce construction drawings and documentation.
- Competency 5: Manage construction phase 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 **19** the following from the Assessor's recommendations:

"Although [the Appellant] provided Cat 2/AOP 2 projects, they only met the competencies for AOP 1 due to the specification standard.

He also did not demonstrate on the competency 5, Knowledge of Contracts and Contract Administration."

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 number of building consent documents with his appeal. He also provided a written reference from a Chartered Engineer at the hearing which supported his application and brought a Design AOP 2 license holder as a supporting witness.

5.2 The Board asked questions of the Appellant covering Competency 4 and 5 for Design (AOP 2).

6.0 Board's consideration

6.1 The Board noted that the Registrar was not satisfied that the Appellant met Competencies 4 and 5 for the Design (AOP 2) licence.

6.2 The Board then considered Competencies 4 and 5 for a Design (AOP 2) 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.

⁷ clause 10 and 11 of the Rules

Board's findings

- 6.4 The Board concluded that the Appellant **provided** sufficient evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 4 and 5 for a Design (AOP 2) license.
- 6.5 The Board noted that the Appellant was a registered architect within the European Union ("EU") and had extensive experience in the EU carrying out a range of projects. The Board questioned the Appellant on Competencies 4 and 5 and noted he was able to answer the Board's questions with accuracy and clarity.
- 6.6 The Board did note that there were some inaccuracies in the documents provided. The Appellant acknowledged those items and undertook to take greater care in the production of documents in the future.

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 license [REDACTED] with a Design (AOP 2) Licence.

7.2 The Board directs the Registrar to issue Design (AOP 2) 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 10^h 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.”*