

BPB Appeal No. A1333

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:	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]
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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 2 December 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 13 January 2020 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 “Competency” 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 Competency 4 for a Design (AOP 2) License.

Design (AOP 2) Licence Competency:

- 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:

"It is my opinion that at this time [the Appellant] had only managed to demonstrate competency to AOP 1. Several aspects were missing from the first project at [REDACTED]. There also was a lack of continuity from the drawings to the specification. For example certain products that had been specified on the plans did not relate to what was in the specifications.

On the second project, [REDACTED], [the Appellant] came into this project after the working drawings were complete. He went through the project in some detail with me, but his actual involvement with the project was quite limited i.e. all his involvement was post Building Consent.

He did manage to demonstrate all other competencies for AOP 1"

- 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, along with a number of references.
- 5.2 The Board asked questions of the Appellant covering Competency 4 for Design (AOP 2).

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was not satisfied that the Appellant met Competency 4 for the Design (AOP 2) licence.
- 6.2 The Board then considered Competency 4 for a Design (AOP 2) License. This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

⁷ clause 10 and 11 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 **did not provide** sufficient evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competency 4 for a Design (AOP 2) license.
- 6.5 The Board noted that the Appellant lacked an in-depth knowledge of pathways to compliance and compliance documents such as E2/AS1 and NZS 3604:2011. Whilst he knew that he needed to refer to these documents he lacked an understanding of the fundamental compliance concepts within them.
- 6.6 The Board also noted that the design documentation provided contained inconsistencies and errors that would have presented difficulties to those presented with the design documents and expected to build in accordance with them. Further, he was not able to readily identify the issues when his attention was drawn to them.
- 6.7 The Board recommends that the Appellant gain further experience being supervised by a Design Area of Practice 2 or 3 license holder before re-applying.

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 2) 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.”*