

BPB Appeal No. A1334

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

██████████ 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:	██████████
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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 15 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 2 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:

"I recommend the application for a Design 2 license is declined. I have also considered offering a lower class.

While [the Appellant] met some of the competencies none of the competencies were met to a minimum standard. His overall experience in both D1 and D2 licence classes are very limited.

[The Appellant] relies on engineers to provide all the overall structural design and layout, which should be within the scope of a D1 or D2 licence class.

A number of competencies around services, engagement and office procedure work is either limited or not processed at all.

His employer confirmed my observations around these matters."

- 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 evidence of his qualifications and a design portfolio.
- 5.2 The Board asked questions of the Appellant covering Competency 2-4 for Design (AOP 1).

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.

⁷ clause 10 and 11 of the Rules

- 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 displayed limited knowledge of critical compliance documents and in particular E2/AS1. He had difficulty answering questions posed by the Board with clarity and certainty. The Board also noted that he had not undertaken development of specifications which is a key competency required of a Design license holder. The Board recommends that he gains further experience in design and preparation of specifications and consent documentation prior to reapplying.
- 6.6 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.

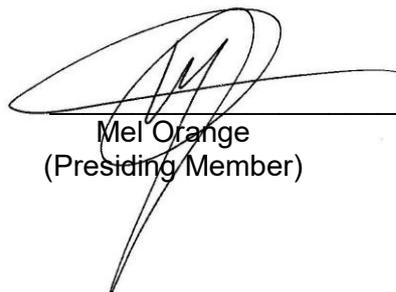
7.0 Board's Decision

- 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.”*