

BPB Appeal No. A1346

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 **[Omitted]** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	5 November 2020 on Zoom
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Appeal heard by:	F Pearson-Green, LBP Design AOP 2 (Presiding) R Dunlop, Retired Professional Engineer F Thomas, LBP, Roofing
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Appearances by:	[Omitted]
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1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of [Omitted] 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 26 August 2020. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 31 August 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 “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 Licence

- 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 1, 2, 3 and 4 for a Design AOP 1 Licence.

Design Licence Competencies:

- Competency 1: Comprehend and apply knowledge of the regulatory environment of the building construction industry.
- 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

- Competency 4: Develop design and produce construction drawings and documentation.

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:

- [Omitted] has extensive experience in the wider construction industry, including design, and was well supported by referees contacted (character references), however during the assessment it was apparent he did not meet the competences required to hold a Design licence.
- Due to project selection and complexity [Omitted] was unable to provide sufficient evidence to demonstrate the full range of competencies required for Design AOP1.
- For Projects 1 and 2 responsibilities were largely limited to Project Management and had limited supporting documentation.
- Project 3, although relevant to AOP1, was a small remediation project and as such did not include many of the competencies that forms part of the assessment.
- The applicant supplied further supporting projects, however they were historic and light on detail.
- The applicant had some gaps in understanding during the interview:
 - Could not demonstrate clear understanding of LBP Design AOP and Building Categories
 - Could not demonstrate clear understanding of how the Building Code is made up and how it should be applied.
- No evidence formal engagement with clients
- Insufficient evidence to demonstrate competency in Establishing design briefs and scope of work and prepare the preliminary design to meet minimum standard AOP1
- Insufficient evidence to demonstrate competency in developing the design and producing construction drawings and documentation to meet minimum standard
- Insufficient evidence to demonstrate understanding of managing the construction phase design to meet minimum standard.

4.3 The Registrar concluded:

"The basis for the Registrar's decision to decline the application

- 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.

⁷ clause 10 and 11 of the Rules

- 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 examples of two more plans, from two houses over ten years old, as well as an Engineering and Infrastructure Assessment Report with his appeal.
- 5.2 The Board asked questions of the Appellant to ascertain his knowledge with regards to the AOP 1 license Competencies.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met none of the Competencies for the Design AOP 1 licence.
- 6.2 The Board then considered Competencies 1, 2, 3 and 4 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

- 6.0 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competency 1 for a Design AOP 1 License.
- 6.1 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, 3 and 4 for a Design AOP 1 License.
- 6.2 Whilst the Appellant showed a great depth of knowledge, it was not necessarily with the specific areas required to meet the competencies of a Design AOP1 license.
- 6.3 The Board feels that the Appellant would benefit from working alongside a suitably qualified and experienced designer to gain more knowledge regarding the Risk Matrix, and therefore the restrictions of a Design AOP 1 license. Experience needs to be gained with regards to the use of the relevant building code clauses such as E2/AS1 and other associated guidance documents and standards.
- 6.4 Once this knowledge is gained, the Appellant is encouraged to apply again.

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 1.1 [Omitted] with a Design AOP 1 License.

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 16th day of November 2020



F Pearson-Green
(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.”*