

**BPB Appeal No. A1348**

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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	12 November 2020 at Wellington
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Appeal heard by:	Chris Preston, Chair, Presiding Ms Pearson-Green, Board Member Bob Monteith, Board Member
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Appearances by:	[The Appellant]
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## 1.0 Introduction

- 1.1 [The Appellant] of Wellington applied for a Design AOP 1 Licence under s 287 of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“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 21 September 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.<sup>2</sup> The minimum standards are set out as “Competencies” in Schedule 1 to the Rules. In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application, the applicant has a right of appeal to the Board.<sup>4</sup>

## 3.0 Scope of the Appeal

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup>. However, the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 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 AOP 1 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.*
- Competency 4: Develop design and produce construction drawings and*

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<sup>1</sup>Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup>S286 of the Act and rule 4 of the Rules.

<sup>3</sup>Clause 4(2) of the Rules

<sup>4</sup>S330(1)(a) of the Act.

<sup>5</sup>S335(2) of the Act

<sup>6</sup>S335(4) of the Act

*documentation.*

#### **4.0 Registrar's Report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>7</sup>. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 18, the following from the assessor's recommendations:

- *"The overall quality of the documentation was poor and the major part of the work had been prepared by others. His knowledge of the requirements to provide good documentation was lacking.*
- *[H]is all-round knowledge of the regulatory environment or and building code was lacking, and he had a limited understanding of the LBP scheme.*
- *[The Appellant's] knowledge of contracts between Designer / Client and Owner / Builder was very limited as was his understanding of the design and documentation process, consultant involvement and the building consent process.*
- *[The Appellant] was not able to present any evidence on the briefing process.*
- *[The Appellant] has no qualification in the design field, no industry membership and was not able to provide evidence of industry learning.*
- *The referees provided were not involved in the projects submitted, and had limited ability to speak to [the Appellant's] competence as a designer."*

4.3 The Registrar concluded:

*The basis for the Registrar's decision to decline the application:*

- *"I have been delegated under S 312(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."*

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<sup>7</sup> clause 10 and 11 of the Rules

## **5.0 Appellant's Submissions**

- 5.1 In the appeal application, the Appellant included a submissions bundle with a number of projects worked on.
- 5.2 At the appeal hearing, the Appellant outlined his work history for the Board.
- 5.3 The Board queried the Appellant on a range of technical aspects as outlined in the Competencies for a Design AOP 1 Licence.
- 5.4 The Board heard from [omitted], the Appellant's [omitted] employer (and business owner of 20 years), who confirmed that the Appellant worked with clients to develop initial design concepts into floor plan and elevations. Designs were typically simplistic single-storey designs of low-risk. From this, Building Consent Documentation was completed by a draftsman and then checked and signed off by a design-licensed LBP.
- 5.5 The Board asked questions to ascertain the Appellant's knowledge of Competencies 2, 3, and 4 which the Registrar had declined him on.

## **6.0 Board's Consideration**

- 6.1 The Board 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.
- 6.2 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency. In this respect the Board notes the provisions of section 314B(b), which requires the LBP to work only within his/her competence.

### *Board's findings*

- 6.3 The Board found that the Appellant did not meet a sufficient number of the performance indicators for a Design AOP 1 Licence.

## **7.0 Board's Decision**

- 7.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision and not license [the Appellant] 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 day of 16 November 2020



Chris Preston (Chair)

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**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.”*