

BPB Appeal No. A1349

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:	25 November 2020 at Auckland
Appeal heard by:	Mr M Orange, Legal Member (Presiding) Mr D Fabish, LBP, Carpentry Site AOP 2 Mr B Monteith, LBP Carpentry and Site AOP 2 Ms F Pearson-Green, LBP Design AOP 2
Appearances by:	[Omitted]

1.0 Introduction

- 1.1 [Omitted] (“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 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 24 September 2020 the Appellant lodged an appeal to the Board against the Registrar’s decision, for a Design License (AOP 1).

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 Licence (AOP 1)

- 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 and 3 for a Design (AOP 1) Licence.

Design Licence (AOP 1) 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

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] was not able to confidently discuss the process of architectural work. She was also unable to discuss the process in any depth with respect to the NZ Standards, Building Codes and the Building Act. I asked her about the build process, building contracts, construction contract Act, which she did not understand at all and had no knowledge of what I was seeking.
- Limited information was provided, aside from the working drawings provided for consenting. The working drawings contained all work necessary for building consent but all details and information supplied was cut and paste details from the codes and product information and specification were very basic and not suitable for what should be full contract to works.
- She could not show me any engagement of service to the client, design brief and the sketches and initial design of her work. I questioned her on this and she advised that her employer undertook this work and the original design. I understood that her involvement was from a later stage in the design process.
- I considered recommending a lower area of practice, but competencies 1, 2, & 3 did not meet the standard for AOP 1. Competency 4 was only met the minimum for AOP 1. Therefore I could not recommend a lower area of practice be offered.

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.
- 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 two new home designs with her appeal.

5.2 At the appeal hearing the Appellant briefly outlined her education background and qualifications, and her work experience. The Board asked questions of the Appellant in respect of the competencies under appeal.

⁷ clause 10 and 11 of the Rules

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for the Design licence (AOP 1):

Design Licence (AOP 1) Competency:

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

- 6.2 The Board then considered Competencies 1, 2, and 3 for a Design Licence (AOP 1). 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 she met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2 and 3 for a Design Licence (AOP 1).
- 6.5 The Board noted that whilst the Appellant had sufficient knowledge in some areas she lacked knowledge in critical aspects of the design competencies appealed
- 6.6 The Board recommends the Appellant increases her regulatory knowledge and gains further experience under supervision before reapplying.

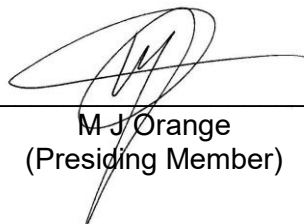
7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license [Omitted] with a Design Licence (AOP 1).**

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 3rd day of December 2020



M J 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.”*