

BPB Appeal No. A1350

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:	2 December 2020 at Auckland
Appeal heard by:	Mr M Orange, Legal Member (Presiding) Ms F Pearson Green, LBP Design AOP 2 Mr R Shao, LBP Carpentry and Site Mr F Thomas, LBP Roofing
Appearances by:	[Omitted]

1.0 Introduction

- 1.1 [Omitted] (“the Appellant”) of Auckland applied for a Design Licence (Area of Practice (AOP) 2) 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 September 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 12 October 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 Licence (AOP 2)

- 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 5 for a Design Licence (AOP 2).

Design Licence Competencies:

- Competency 5: Manage construction phase design.

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

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

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] presented two recent projects which were both relevant to the AOP 2 level of design, however both of these projects had minor errors and things that were just not quite up to standard for an AOP 2 project.
- When we discussed contact administration, I asked [Omitted] if she could give me three versions of contracts that were available ie a small works contract, a larger works contract with no engineer and a larger contract with an engineer appointed.
- [Omitted] was unable to list most of these, however she was aware of 3910 and she was aware of a few of the duties that a contract administrator would provide.
- It is my opinion that from the evidence provided at the assessment and post the assessment by email that [Omitted] demonstrated a reasonable level of competence. However it is also my opinion that [Omitted] did not in contracts and contract administration. She therefore failed to demonstrate competency 5.

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 a written submission and supporting document with her appeal, relating to competency 5.

5.2 The Board asked questions of the Appellant.

6.0 Board's consideration

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Design licence under appeal:

Design Licence Competencies:

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

⁷ clause 10 and 11 of the Rules

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.

- 6.2 The Board then considered Competency 5 for a Design Licence (AOP 2). 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 **provided** evidence to demonstrate that she met sufficient Performance Indicators to satisfy the requirements of Competency 5 for a Design Licence (AOP 2).
- 6.5 The Board noted that in granting a Design License (AOP 2) that the Appellant only just met sufficient indicators for the required competency. The Board cautioned the Appellant that she needs to ensure that she works within her personal competency and that it would be advisable for her to gain more experience in contract management prior to her undertaking the role without guidance or assistance.

7.0 Board's Decision

7.1 Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [Omitted] with a Design Licence (AOP 2).

7.2 The Board directs the Registrar to issue a Design Licence (AOP 2) to [Omitted] as soon as practicable.

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 7th 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.”*