

**BPB Appeal No. A1359**

**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:	8 December 2021, on Zoom
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Appeal heard by:	Mr C Preston (Presiding) Mr R Monteith, LBP Carpentry and Site AOP 2 Ms F Pearson-Green, LBP Design AOP 2 Mr R Shao, LBP, Carpentry Site AOP 1 Ms J Clark, Legal Member
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Appearances by:	[the Appellant] Kevin (Interpreter)
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## **1.0 Introduction**

- 1.1 [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 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 10 August 2021. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 23 August 2021 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 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 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 Licence (AOP 1)*

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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

- 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.*

*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 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 assessors' recommendation.

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

- [The Appellant] presented to me three projects. All three projects failed to meet the competencies required for the standard for a LBP practitioner for AOP 1 or AOP 2 .
- [The Appellant] was reasonably well supported by the referees that I spoke with. [The structural engineer] said [the Appellant] was quite good and he seemed to have all the relevant information on his plans.
- [The Appellant] demonstrated repeatability in the fact that he didn't demonstrate the competencies required. Especially Competency 1 regulatory knowledge and Competency 5, knowledge of Contracts and Contract Administration.
- Therefore I recommend that [the Appellant] be declined a design licence at this time.

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

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 with his appeal a selection of projects to demonstrate his work and experience.

5.2 The Appellant was supported by an interpreter.

5.3 The Board asked questions of the Appellant across the four 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 2) licence.

6.2 The appeal sought the grant of a Design (AOP 1) licence.

6.3 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.

### **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.*

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

- 6.4 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

*Board's findings*

- 6.5 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 1, 2, 3 and 4 for a Design (AOP) 1 Licence.
- 6.6 It was the Board's view that the Appellant had a limited depth of knowledge and experience across the full range of required competencies. The Appellant would benefit from gaining more experience and obtaining some mentoring, particularly in respect of the class of license he is seeking.

**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 [the Appellant] with a Design (AOP 1) Licence.**

**The Board was not required to consider the Registrar's decision not to license [the Appellant] with a Design (AOP2) 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 21st day of December 2021



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Mr C Preston  
(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.”*