

**BPB Appeal No. A1360**

**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: | 13 October 2021 on Zoom |
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| Appeal heard by: | Mr C Preston (Presiding)<br>Mrs F Pearson-Green, LBP, Design AOP 2<br>Mr D Fabish, LBP, Carpentry and Site AOP 2<br>Mrs J Clark, Legal Member |
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| Appearances by: | [the Appellant] |
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## **1.0 Introduction**

- 1.1 [The Appellant] of Northland applied for a Design (Area of Practice (AOP) 1) 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 9 July 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 11 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 Schedule1<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) License*

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

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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

### **Design Licence Competencies:**

*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] showed me three projects, one of which was a project that he showed me last year.
- [the Appellant] demonstrated repeatability with the projects. The projects did not meet the competencies required for AOP 1.
- [the Appellant] was relatively well supported by the referees that I spoke with.
- Although the structural engineer referee was a little reticent as he had only done the one project with [the Appellant].
- However it is my opinion that [the Appellant] has not produced enough evidence to warrant being granted a licence.
- Therefore I recommend at this stage that [the Appellant] be declined a design licence.

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."

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

## 5.0 Appellant's Submissions

- 5.1 The Appellant included a full overview of his experience and select examples from a variety of projects with his appeal
- 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 Competency for the Design (AOP 1) licence:

### **Design (AOP 1) Licence Competencies:**

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

- 6.2 The Board then considered Competencies 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*

- 6.4 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) Licence.
- 6.5 The Appellant may wish to continue working under supervision to gain a deeper and broader understanding and knowledge, to demonstrate the competencies required for a Design License.

## 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.
- 7.2 Pursuant to s338 of the Act the Board has resolved not to impose costs against either party in respect of this appeal.

## 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 22<sup>nd</sup> day of October 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."*