

BPB Appeal No. A1361

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	15 December 2021 on Zoom
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Appeal heard by:	Mr C Preston (Presiding) Mr M Orange, Legal Member Ms F Pearson-Green, LBP Design AOP 2 Mr R Shao, LBP Carpentry and Site AOP 1
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Appearances by:	[the Appellant] [Character witness 1] [Character witness 2]
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1.0 Introduction

- 1.1 [The Appellant] of Hamilton 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 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 20 September 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.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 (AOP 2) Licence

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

- 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 3, 4 and 5 for a Design (AOP 2) Licence.

Design Licence Competencies:

Competency 3: Establish design briefs and scope of work and prepare preliminary design.

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

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 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] seemed to struggle in the face to face.
- [The Appellant] was not able to satisfy Competency 4 at Design AOP2 - specifically:
 - prepare detailed specifications for building consent and construction.
- Specifications were poorly edited and did not meet minimum standard for Design AOP2
- [The Appellant] was not able to satisfy Competency 5 at Design AOP2 - specifically:
 - demonstrate understanding of conditions of contract and methods of procurement,
 - demonstrate understanding of the construction observation process,
 - demonstrate understanding of the contract administration process

⁷ clause 10 and 11 of the Rules

- Additionally, Due to well developed in-house systems being practiced by his employer, [the Appellant] had difficulty in demonstrating sufficient involvement across each of the projects to demonstrate competency at Design AOP2.
- The Assessor has determined there is still sufficient evidence to support [the Appellant] maintaining his Design AOP1, notwithstanding the Specification which the assessor had a word to him about.

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 provided more detailed specifications and two sets of plan documentation and other supportive documentation, with his appeal.

5.2 The Appellant appeared with 2 character witnesses.

5.3 The Board asked questions of the Appellant.

6.0 Board’s consideration

6.1 The Board noted that the Appellant currently holds a Design (AOP 1) License. The Board further noted that the Registrar was satisfied that the Appellant met the following Competencies for the 1 and 2 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.

6.2 The Board then considered Competencies 3, 4 and 5 for a Design (AOP 2) 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 3, 4 and 5 for a Design (AOP 2) Licence.
- 6.5 The Appellant would benefit from gaining further experience and knowledge relating to the Area of Practice 2 Competencies. The Board suggested to the Appellant he could benefit from some mentoring in this area and from joining an organization for additional industry support.

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 2) 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 22nd day of December 2021



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.”*