

BPB Appeal No. A1362

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:	7 December 2021, on Zoom
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Appeal heard by:	Mr C Preston (Presiding) Mr D Fabish, LBP, Carpentry Site AOP 2 Mrs F Pearson-Green, LBP Design AOP 2 Mr R Shao, LBP, Carpentry Site AOP 1 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 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 15 September 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 3 October 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 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 Competencies 2, 3, 4 and 5 for a Design Licence.

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.

Competency 5: Manage construction phase 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:

- [The Appellant] showed me three projects all together, two of them I managed to get printed off and look over them prior to the assessment and assessed these drawings and specifications.
- The first project had a few small errors on it, which are described above. The specification for one of the projects was also Masterspec minor, which [the Appellant] had used the wrong format or template for the specification. It needed to be Basic or Standard for a house of this size.
- Although the drawings of the second project at [Omitted] Street did meet the competencies for AOP 2, I felt the drawings for the first project did not meet the competencies required for the errors that I picked up and are described above.
- The referees that I spoke with were relatively supportive of [the Appellant], although they did mention he has only been in New Zealand and the industry a short time.
- It is my opinion that [the Appellant] has applied for a design license a little bit prematurely. Therefore I recommend at this time that [the Appellant] be declined a design licence at this time.

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 a number of consented projects with his appeal to demonstrate the competencies for a Design license.

5.2 The Board asked questions of the Appellant relating to the additional information provided, and general industry questions relating to the design competencies.

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:

Design 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, 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 the competencies for a Design AOP 2 Licence.
- 6.5 The Board concluded that the Appellant **provided** 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.
- 6.6 The Board strongly advised [the Appellant] to work within his competency, under Area of Practice 1. The Board notes that attention to detail across all aspects of the design is important – starting with the calculation of the Risk Matrix. [The Appellant] needs to concentrate on ensuring that the non-standard details that he draws will meet the requirements of the Building Code and that they are fit for purpose.
- 6.7 The Board said that [the Appellant] came across as diligent, responsible, and appears keen to learn. The Board suggests [the Appellant] looks into mentoring and joining an industry organization that will enable him to continue in his professional development.

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 [the Appellant] with a Design (AOP 1) Licence.**
- 7.2 **The Board directs the Registrar to issue a Design (AOP 1) Licence to [the Appellant] 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 20th 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.”*