

**BPB Appeal No. A1151**

**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:	23 July 2013 at [omitted]
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Appeal heard by:	Richard Merrifield Brian Nightingale Colin Orchiston Dianne Johnson	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (Witness for Appellant) [omitted] (Witness for Appellant)  The Registrar was available by telephone but was not required to participate.
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## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Foundations Area of Practice (AOP) 1 and 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 18 December 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 4 February 2013 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 to the Rules. In determining whether a person meets a competency, regard must be had 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 granting of a Foundation Area of Practice 1 and 2 Licence.*

- 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 Foundation AOP 1 and 2 Licence.

### **Foundation Area of Practice 1 and 2 Licence Competencies:**

*Competency 2: Demonstrate knowledge of current foundation trade practice.*

*Competency 3: Carry out planning for foundation work.*

*Competency 4: Carry out foundation work.*

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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

#### 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 19, the following from the Assessor's recommendations:

“...

- *[The Appellant] began installing swimming pools in 1993 as a labourer and then progressed to a foreman. His role involved working on pool installations and carrying out work on slab and piles on residential foundation projects.*
- *In 1999 [the Appellant] became self-employed with his own pool installation company.*
- *[The Appellant] is involved in the initial design and consent process of a project and he liaises with the client, Architect, BCA and Engineer.*
- *[The Appellant] manages and carries out the foundation and installation work of reinforced concrete in-ground swimming pools. His work also includes carrying out complex engineered pool foundations, some landscape and retaining walls, and occasionally where a pool wall will also act as a common wall of the house.*
- *[The Appellant] confirmed that he only builds and installs swimming pools and has only been involved in aspects of foundations for buildings some years ago.*
- *[The Appellant's] regulatory knowledge of building and foundation work was sufficient to cover the requirements for Competency 1.*
- *[The Appellant] was offered the opportunity to submit additional information in regards to building foundations he has carried out; however he was unable to do so.*
- *The four referees that were provided were supportive of [the Appellant's] application and could confirm his ability to coordinate and construct in-ground reinforced concrete swimming pools.*
- *[The Appellant's] referees also confirmed that he has a high level of understanding of concept design; he can liaise with the BCA and Engineers, and also coordinate builders and subcontractors.”*

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

*The basis for the Registrar's decision to decline the application.*

4.3 The Registrar concluded:

*"21 I reviewed the assessors report and [the Appellant's] application.*

*22. 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.*

*23. The projects [the Appellant] provided were swimming pool foundations."*

## **5.0 Appellant's Submissions**

5.1 The Appellant appeared before the Board with two witnesses and tabled engineering drawings and photos of a current project along with a photo of a finished pool.

5.2 The Appellant advised that he had been in the swimming pool industry for 20 years mainly building swimming pools, driveways and some house slabs. For the last 12 years he has owned and operated his own business.

5.3 The Appellant then spoke to the photos and drawings of the project tabled, being an in-ground reinforced concrete swimming pool forming an integral part of a [omitted] in [omitted].

5.4 The first witness was a construction engineer who had engaged the Appellant for the construction of his pool. He confirmed the Appellant's ability and capability to coordinate and construct the entire project from a personal experience.

5.5 The second witness has extensive experience in the swimming pool industry and confirmed that the Appellant's skills and experience were held in high regard. In his view swimming pool structures were generally more complex than residential foundations.

## **6.0 Board's consideration**

*Foundation AOP 1 Licence*

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Foundation AOP 1 Licence:

### **Foundation AOP 1 Licence Competency:**

*Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*

6.2 The Board then considered Competencies 2, 3 and 4 for a Foundation 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.
- 6.4 The Board considered that the Appellant demonstrated that he met the performance indicators required for Competencies 2, 3 and 4, through the type of swimming pool construction that he carried out.

*Board's findings*

- 6.5 The Board was satisfied that the Appellant demonstrated that he met sufficient performance indicators in Foundation AOP 1 Competencies 2, 3 and 4.
- 6.6 The Board concluded that the Appellant met the competency requirements for a Foundation AOP 1 Licence.

*Foundation AOP 2 Licence*

- 6.7 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Foundation AOP 2 Licence:

**Foundation AOP 2 Licence Competency:**

*Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*

- 6.8 The Board then considered Competencies 2, 3 and 4 for a Foundation 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.
- 6.9 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.10 The Board considered that the Appellant has not provided sufficient evidence of knowledge or experience working on timber framed sub floor construction.
- 6.11 The Board was not satisfied that the Appellant demonstrated that he met sufficient performance indicators in Foundation AOP 2 Competencies 2, 3 and 4.

*Board's findings*

- 6.12 The Board concluded that the Appellant did not meet the competency requirements for a Foundation AOP 2 Licence.

**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 license the Appellant with a Foundation Area of Practice 1 Licence.**

**7.2 The Board directs the Registrar to issue a Foundation Area of Practice 1 Licence to the Appellant as soon as practicable.**

**7.3 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Foundation Area of Practice 2 Licence. The appeal is therefore declined.**

**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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.

8.3 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 5th day of August 2013

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Richard Merrifield  
(Presiding Member)

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**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.”*