

BPB Appeal No. A1010

IN THE MATTER OF

The Building Act 2004

AND

IN THE MATTER OF

An Appeal to the Building Practitioners' Board under Section 330(1)(a) by
against
a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1. Introduction

- 1.1 (the Appellant) of Christchurch applied for Design/Area of Practice 3 Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined the application under Rule 12 and offered a Design/Area of Practice 1 Licence under Rule 12(1). was notified of the Registrar's decision on 3 March 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 21 March 2011, appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of further information provided, the Board review his application for Design/Area of Practice 3.
- 1.4 The Appeal was considered in accordance with the Board's "Appeals Procedure". The Board decided to hear the appeal in Wellington on 9 May 2011. As was unable to attend the hearing the Board resolved to consider the appeal "on the papers" (refer 3.10.16 of the Board's Appeals Procedure).
- 1.5 The Procedure provides that appeals are considered by way of a "re-hearing"², and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure),

¹ Incorporating amendments for 2008, 2009 and 2010.

² Refer S.335(2) of the Act.

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1.6 The following were present for the hearing of the appeal:

Alan Bickers	Board Chairman (Presiding)
David Clark	Board Member
Jane Cuming	Board Member
Brian Nightingale	Board Member
David O'Connell	Board Member
Colin Orchiston	Board Member

No other persons were present for the hearing of the appeal.

1.7 The Board received the Registrar's report of 8 April 2011.

2. Background

2.1 On 22 October 2010, [redacted] submitted his application to the Registrar to be licensed as a Design/Area of Practice 3 building practitioner. The application was treated as complete and was sent for assessment (under Rule 11) on 2 November 2010.

2.2 Assessment Systems Limited (ASL) reviewed the application and arranged an appointment for a face to face meeting for 2 December 2010. The assessment was completed by an Assessor on 6 November 2010, and a peer review of the assessment was conducted on 16 December 2010.

2.3 The Assessor recommended to the Registrar (under Rule 11) that [redacted] application for the Design/Area of Practice 3 should be declined, and that a Design/Area of Practice 1 should be granted.

2.4 In regard to the Design/Area of Practice 3 application, the Assessor found that [redacted] did not meet the requirements for:

Competency 2: Manage the building design process.

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

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

2.5 After taking into account the recommendation of the Assessor and the requirements of S.286 of the Act, the Registrar decided (under Rule 12) to decline the application for Design/Area of Practice 3, and grant Design/Area of Practice 1.

2.6 On 3 March 2011 [redacted] was formally notified of the Registrar's decision to decline his Design/Area of Practice 3 application and grant Design/Area of Practice 1. He was also advised of his right to appeal the decision within 20 working days (under Rule 13(3)).

2.7 On 21 March 2011, [redacted] appealed to the Board against the Registrar's decision, and set out his grounds for appeal.

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3. The Registrar's Report

3.1 In order to become licensed, [redacted] was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under section 286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For Design/Area of Practice 3 these competences are:

- *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.

In order to be licensed an applicant must demonstrate that he/she meets all the required Competencies of the Licence Class.

- 3.2 These competences may be demonstrated by meeting some or all of the performance indicators for the applicable Licence Class set out in the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).
- 3.3 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.
- 3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).

Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.

3.5 In making the recommendation to decline the application, the following reasons were recorded by the Assessor:

- (a) [redacted] had few examples of his drawings for the [redacted] project (project 1) available to show the Assessor, and could not recall important aspects of it. There were no project files or any information available to substantiate the [redacted] project, and it was difficult to verify what role in the project has been.
- (b) A small basement alteration relied on the engineer's drawings for much of the structural detail. The [redacted] residence was a category 1 building.
- (c) [redacted] knowledge and experience of contractual matters was very limited.

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- (d) was using a non-licensed version of Masterspec, and many of the schedules were not filled in.
- (e) For the residence, there was no evidence of a client brief or initial design sketches, and no evidence of lodging the building consent application or dealing with council requests for information. was not involved with tendering of the project or contract administration.

3.6 The Registrar based his decision to decline the Design/Area of Practice 3 application and grant the Design/Area of Practice 1, solely on the Assessor's recommendation, for the reasons set out above.

4. The Appellant's Submissions

4.1 made two submissions to the Board setting grounds for appeal.

The first submission dated 14 March 2011 asserted that he had over 30 years in the construction sector he had been associated with projects valued in excess of \$30 million and he was required to "produce construction, tender, consent drawings and documentation" and that he had been "closely involved with the site supervision". He referred his work during 2006-2008 with for two which his application suggested were Category 3 buildings³ (although they appeared from the 7 sheets of drawings to be 2-storey construction and therefore not Category 3). There was no verification of extent of involvement in any of the documentation provided, either with his application or submission, except to the extent referred to below.

4.2 submitted 6 sheets of drawings for 2 other projects undertaken by which noted that they were drawn by

One project, (Christchurch) was an extensive fitout of a 4-level commercial building. The annotation noted that it was drawn by on 18 March 2009, but that developed design was carried out in 2007 (before apparently joined the firm).

The second project, (Auckland) also involved an extensive fitout of an existing building and drawn by on 18 March 2009 which is, coincidentally, the same date as the other project (above).

These drawings demonstrate a good standard of draftsmanship but contained only layout plans with no detailing.

While it might be reasonably assumed that these have been drawn by there is no verification that the extent of his involvement encompasses what asserted in his application, viz "responsible for documentation (architectural) needs . . .".

³ Category 3 buildings are defined by Part 3 of the Schedule to the Building (Designation of Building Work Licence Classes) Order 2007.

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4.3 [redacted] second submission to the Board is dated 13 April 2011 which refers to:

- (a) Conflict of interest⁴. (No information of relevance was provided to support this).
- (b) Reason for not supplying further documentation (Presumably cost).
- (c) Structural Design. (Whether details should be contained in the architectural or engineering drawings).
- (d) Construction detailing. (Asserted that he had provided sufficient information).
- (e) Specifications. (Reference to his sources, i.e. Masterspec).
- (f) Notice of meeting. (Reason for not producing documents).
- (g) Recognition of projects. (Point is unclear).
- (h) Project Files. (Assessor had access).
- (i) Category 3 Projects. (Claimed the [redacted] and [redacted] projects were Category 3).
- (j) ADNZ involvement. (Claim of bias by Assessor).

Overall, all [redacted] submission was challenging the manner of the assessment conducted.

The appeal process provides the opportunity of a re-hearing of application so there can be no prejudice to him.

5. Board's Consideration

5.1 The Board has considered [redacted] submissions and examined the additional material that he has provided.

5.2 The Board notes the difficulty that both an Assessor and the Registrar face when an applicant's submitted documentation does not contain some form of independent verification of his/her involvement with a project, particularly in relation to Design and/or Site Licences for Categories 2 and 3 buildings. The Board considers that it is proper for the Assessor and/or the Registrar to seek verification of an applicant's scope of involvement and the specifics of the work undertaken. Such information is required for the Assessor and Registrar to be satisfied that the competency requirements of the Rules have been met. For Design and Site Licences for Areas of Practice 2 or 3, the Board considers

⁴ It is assumed that this refers to the Assessor.

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that Assessors and the Registrar need to adopt a conservative approach and that it is essential that some suitable form of verification is provided by an applicant given the design risks associated with these more complex categories of buildings.

The burden of proof of his/her scope of involvement with submitted projects lies with an Appellant (refer 3.11.18 of the Board's Appeals Procedure) and in this case the Appellant has not met that requirement to the Board's satisfaction.

- 5.3 While the drawings submitted by _____ demonstrate a competent standard of draftsmanship they do not demonstrate his involvement with design. The Board has previously determined that "design" involves a range of processes comprising the analysis of needs, service requirements and operating conditions and the synthesis of elements, materials and systems to achieve the desired objectives. The Board has also recognised the various stages of the design process (preliminary, developed and detailed design and contract documentation) and the different competency requirements of these stages.

Irrespective of the lack of verification of _____, submitted documentation, the Board has not been provided with any evidence that demonstrates his competence in design and that he meets the minimum standards prescribed for Competencies 2, 3 and 4 for Design/Area of Practice 3 or for Area of Practice 2.

- 5.4 _____ has not provided the Board with any evidence confirming his experience with design of Category 3 buildings. Notwithstanding that the building may meet the definition of a Category 3 building if the nature of the applicant's work is not at the level of Design/Area of Practice 3 then the Board does not consider it qualifies as demonstrating the required standard of competence. _____ submitted drawings are generally layout plans and clearly do not meet the standard of work required for Area of Practice 3.
- 5.5 _____ has not provided the Board with evidence that he meets all of the Competencies specified in the Rules for Design/Area of Practice 3. The Board, therefore, concurs with the Registrar's decision not to grant a Design/Area of Practice 3 Licence.

6. Board's Decision

- 6.1 **The Board confirms the Registrar's decision not to grant a building practitioner's licence for Licence Class – Design/Area of Practice 3.**
- 6.2 The reasons for the Board's decision are set out in paragraphs 5.2 to 5.5 (inclusive).

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7. Costs

- 7.1 Pursuant to S.338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.⁵
- 7.2 The Board invites submissions from the Appellant and the Registrar on costs, to be supported by evidence, not later than 15 June 2011.

8. Publication of Name

- 8.1 Pursuant to S.339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invites submissions from the Appellant on prohibition of publication of the Appellant's name, not later than 15 June 2011.

Signed and dated this *31st* day of May 2011

Alan Bickers
Chairman
(Presiding Member)

⁵ The "parties" are the Appellant and the Registrar. The Board is not a party.

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Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

333 *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; or*
 - (b) *suspend or cancel his or her licensing.*

- (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); or*

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.*