

BPB Appeal No. A1017

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 the Appellant against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1. Introduction

- 1.1 On 3 May 2011, the Appellant applied for a Design (Area of Practice 2) Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 On 13 July 2011, the Registrar of Licensed Building Practitioners ("the Registrar") declined the application under Rule 12, granted a Design (Area of Practice 1) Licence, and advised of the right to appeal that decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 18 July 2011 the Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board grant a Design (Area of Practice 2) Licence.
- 1.4 The Board held an Appeal hearing on 27 September 2011. The Appeal was considered in accordance with 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).
- 1.6 The following were present for the hearing of the appeal:

Board Members and support staff:

Colin Orchiston	Presiding Member
Jane Cuming	Board Member
Brian Nightingale	Board Member
William Smith	Board Member
Dianne Johnson	Board Member
Pam Lwee	Acting Board Secretary

¹ Incorporating amendments for 2008, 2009 and 2010.

² Refer S.335(2) of the Act.

The Appellant

Registrar:

Mark Scully

1.7 The Board received the Registrar's report of 1 August 2011.

2. The Registrar's Report & Submissions

2.1 In order to become licensed, the Appellant 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.

2.3 For the Design (Area of Practice 2) Licence these competencies are in relation to category 1 and 2 buildings as follows:

- 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

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

2.5 These competencies may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).

2.6 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.

2.7 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).

2.8 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.

2.9 In making the recommendation to decline the application, the reasons below were recorded by the Assessor:

- The documentation of the category 2 building presented for assessment was "barely adequate"

- The applicant did not show a good understanding of working within the limits of his competency
- Competencies demonstrated: 1, 2, 3 only (not 4)

3. The Appellant's Submissions

- 3.1 The documentation provided to the Assessor was limited in extent because clients only sought and paid for a minimum level of service, but there was an understanding of construction and technical requirements, and the buildings were successfully completed and gained a Code Compliance Certificate.
- 3.2 Although commercial work, townhouses, a retirement home and some high-rise apartment fitouts had been undertaken in the past, they did not qualify for assessment because they were not "recent" as defined in the application form.
- 3.3 The recent drawings and specifications were personally undertaken, but in the past many projects were documented by others under the direction and oversight of the Appellant.
- 3.4 Ongoing education and skill/technical updating was undertaken.
- 3.5 Attendances on site during the construction were of limited extent only.
- 3.6 The Appellant provided drawings for a project not viewed by the Assessor. This was a 2002 category 2 project comprising a large warehouse/office building which was personally drawn by the Appellant.

4. Board's Consideration

- 4.1 The Board was required to be satisfied that the Appellant had undertaken the work presented.
- 4.2 The Board viewed the drawings for one of the projects submitted to the Assessor. This was a two storey house of moderate complexity which the Board and the Assessor considered to be of category 2. Whilst the Board had concerns about the drafting clarity and level of information, the technical information provided was commensurate with the complexity. In particular, specific problem areas and junctions had been detailed to an acceptable standard.
- 4.3 The Assessor had viewed a category 1 project, and described the documentation as "minimal in extent". That project was not submitted to the Board.
- 4.4 The Board viewed drawings for the 2002 commercial building (above). The Appellant described his involvement as consultant co-ordination, all levels of design resolution and documentation, dealing with regulatory requirements, participation in subtrade procurement, and limited site attendances during construction.
- 4.5 In previous appeals the Board has, taken the view that satisfaction of Building Consent requirements may be insufficient to establish LBP competencies.

Whilst noting that significant details were absent in this documentation, the Board acknowledged that the building had gained a CCC and has been put into use.

- 4.6 While the project presented to the Board was beyond the 5 year horizon of the application form and Assessor's guidelines, the Board was satisfied that the Appellant has an understanding of the changes in technical requirements since then.
- 4.7 The Appellant demonstrated that he understood the range of technology currently involved in category 2 buildings (including "leaky buildings" issues), what was required to communicate that to the design and construction teams, and procedures for fair and equitable tendering.
- 4.8 The Board recommends that the Appellant seeks further professional development in contract and compliance documentation. However, it found that sufficient of the competency 4 performance indicators were met in respect of category 2 design work.

5. Board's Decisions

- 5.1 Pursuant to S.335(3) of the Act and Clause 3.11.3 of the Board's Appeals Procedure, the Board has resolved to reverse the Registrar's decision not to issue the Appellant with a Design (area of practice 2) Licence.**
- 5.2 Pursuant to Clause 3.11.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Design (area of practice 2) Licence to the Appellant as soon as practicable.**
- 5.3 The Board's reasons are that the Appellant has demonstrated, to the Board's satisfaction, that he meets sufficient of the competency requirements under the Licensed Building Practitioners' Rules for the Design (area of practice 2) Licence to demonstrate competency in respect of Category 1 and 2 buildings

6. Costs

- 6.1 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.³
- a. Submissions on costs were sought from the Appellant and the Registrar.
 - b. Neither the Appellant nor the Registrar sought costs.
- 6.2 The Board, having considered the circumstances of this appeal, directs that costs shall lie where they fall.

³ The "parties" are the Appellant and the Registrar. The Board is not a party.

7. Publication of Name

- 7.1 Pursuant to S.339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- a. The Board invited submissions from the Appellant on this matter.
 - b. The Appellant indicated that he had no firm views on the matter.
- 7.2 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant not be published.

Signed and dated this 7th day of November 2011

Colin R Orchiston (Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

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; 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.*