

BPB Appeal No. A1312

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 [REDACTED] against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	28 November 2018 Auckland
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Appeal heard by:	Chris Preston (Presiding) Richard Merrifield, LBP, Carpentry Site AOP 2 Mel Orange, Legal Member Robin Dunlop, Retired Professional Engineer
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Appearances by:	[REDACTED]
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1.0 Introduction

- 1.1 [REDACTED] (“the Appellant”) of Auckland applied for a Foundations (Concrete Foundation Walls, Slab-on-ground, and Concrete or timber pile foundations) 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 for the Foundations (Concrete or timber pile foundations) Licence and notified his decision by letter dated 31 August 2018. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 27 September 2018 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 Foundations (Concrete or timber pile foundations) 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 Competency 4 for a Foundations (Concrete or timber pile foundations) Licence.

Foundations (Concrete or timber pile foundations) Licence Competency:

Competency 4: Carry out foundation work

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] has vast knowledge in concrete foundations and concrete slab on ground area of practice. However, he was unable to provide evidence of work in the concrete or timber pile area of practice except for the drilling of pile holes, placement of reinforcing and pouring of concrete.
- The work [the Appellant] put forwards in relation to piles appears to be carrying out work to piles below (and supporting) concrete foundations, rather than above ground piles making up the sub-floor structure of a dwelling. In his work history, these piles are supporting pool structures.

- 4.3 The Registrar concluded:

"The basis for the Registrar's decision to decline the application

- 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."

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant provided the Board with an opening summary and an assessment of his skills which was predominately in regards to the construction of concrete swimming pools. He has a number of documents with him, but when asked if those documents provided evidence of residential concrete or timber pile construction, he said they did not. The Board did not receive these documents into evidence.
- 5.2 The Board asked questions of the Appellant.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Foundations (Concrete Foundation Walls and Slab-on-ground) licence:

Foundations (Concrete Foundation Walls and Slab-on-ground) Licence Competencies:

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

Competency 2: Demonstrate knowledge of current foundation trade practice.

Competency 3: Carry out planning for foundation work.

Competency 4: Carry out foundation work.

The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for the Foundations (Concrete Foundation Walls and Slab-on-ground) licence:

Foundations (Concrete or timber pile foundations) Licence Competencies:

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

Competency 2: Demonstrate knowledge of current foundation trade practice.

Competency 3: Carry out planning for foundation work.

- 6.2 The Board then considered Competency 4 for a Foundations (Concrete or timber pile foundations) Licence. This Competency 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 Competency 4 for a Foundations (Concrete or timber pile foundations) Licence.

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 Mr [REDACTED] [REDACTED] with a Foundations (Concrete or timber pile foundations) 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 30th day of November 2018



Chris 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.”*