

**BPB Appeal No. A1318**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	24 July 2019 - Auckland
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Appeal heard by:	Richard Merrifield Mel Orange Robin Dunlop Faye Pearson-Green
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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 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 16 May 2019. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 10 June 2019 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 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 Schedule1<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 grant of a Foundations 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 & 4 for a Foundations Licence.

### Foundations 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 **18**, the following from the Assessor's recommendations:

- The Appellant was unable to provide two technical referees for each Area of Practice (AOP) that were able to confirm the repeatability or ability to carry out or supervise the carrying out of the full scope of both foundations within the last 5 years.
- For area of practice 1: Concrete foundation walls and concrete slab-on-ground, neither referee could confirm the applicants involvement in the full scope of work. Both referees were not supportive of granting a licence.
- For area of practice 2: Concrete or timber pile foundation, referee 1 could not confirm the applicants involvement in a full scope of work, and did not support the granting of a licence. Referee 2 did confirm the applicant had carried out the full scope of work was supportive of granting a licence.

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."

#### **5.0 Appellant's Submissions**

5.1 The Appellant included with his appeal

5.1.1 Rib Raft Foundation experience

5.1.2 Pile Foundation experience

5.1.3 Unitec Certificate of New Zealand, Diploma in Engineering

#### **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competency for the Foundations licence:

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

### **Foundations Licence Competencies:**

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

- 6.2 The Board then considered Competencies 2, 3 & 4 for a Foundations 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 Whilst the Appellant provided some knowledge of the basic concepts there were considerable gaps in his knowledge some of which were critical to the licence class sought. The Board did note that the Appellant did have experience in commercial foundations but only limited experience in residential foundations and that he had not carried out or been involved in work across a range of foundations types.
- 6.5 The Appellant acknowledged he had only completed a small number of simple residential concrete slabs but had not completed timber pile residential foundation up to floor level.
- 6.6 The Board recommends that the Appellant gains more experience in both types of foundations (concrete and timber) before reapplying.
- 6.7 The Board concluded that the Appellant **failed to provide** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competencies 2, 3 & 4 for a 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] with a 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 12th day of August 2019



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Richard Merrifield  
(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.”*