

BPB Appeal No. A1322

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:	10 October 2019, in Auckland, on the papers
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Appeal heard by:	Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding) Mel Orange, Legal Member David Fabish, LBP, Carpentry Site AOP 2 Robin Dunlop, Retired Professional Engineer Rob Shao , LBP, Carpentry Site AOP 1
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Appearances by:	
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1.0 Introduction

- 1.1 [REDACTED] [REDACTED] (“the Appellant”) of Auckland applied for a Foundations (Concrete foundation walls and concrete slab-on-ground) 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 and notified his decision by letter dated 22 August 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 3 September 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.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 foundation walls and concrete slab-on-ground) 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 3 and 4 for a Foundations (Concrete foundation walls and concrete slab-on-ground) Licence.

Foundations Licence Competencies:

*Competency 3: Carry out planning for Foundation work.
Competency 4: Carry out Foundation work*

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

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:

Summary of the assessor's recommendation

"In making the recommendation that [the Appellant's] application for an Foundations licence should be declined, the assessor noted the following:

██████ carries out the preparation processes for foundations after the Surveyor establishes the datum points. He carries out the setout, forming and establishing formwork, placing hardfill and polythene placing pods and reinforcing. All factors pre-placement of concrete.

- Actual placement, screeding, finishing and curing of concrete is carried out by a specialist subcontractor. Applicant does not supervise this subcontractor, but does check before striking the formwork and cutting the concrete that the foundation/slab is to required standard.
- During applicants interview he could outline in detail from setup/setout to completed floor the technical details including foundation nuances that portray competency and understanding of foundation requirements. Applicant has indicated a level of competency understanding what is necessary to lay and finish/cure concrete without actually carrying out the laying of concrete. However there were no examples of ██████ actually carrying this work out himself as part of his application.
- Whilst competencies 1 and 2 have been met by applicant the actual direct involvement in handling concrete to meet the practical aspects of competencies 3 and 4 have not been met.

- 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 reasons set out above. Although the assessor noted there may be grounds to overrule the assessor's recommendation due to the strong theoretical knowledge of the candidate, I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

5.0 Appellant's Submissions

⁷ clause 10 and 11 of the Rules

- 5.1 The Appellant included with his appeal copies of Inspection records, photos of foundation work, and signed references.
- 5.2 The Appellant applied for the appeal to be heard on the papers. The Presiding Member at a prehearing conference had encouraged him to appear in person, notwithstanding the Appellant chose not to do so.

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 concrete slab-on-ground) Licence:

Foundation Licence Competencies:

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

Competency 2: Demonstrate knowledge of current foundation trade practice.

- 6.2 The Board then considered Competencies 3 and 4 for a Foundations (Concrete foundation walls and concrete slab-on-ground) 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 The Board concluded that the Appellant **provided** evidence to demonstrate that he met sufficient Performance Indicators to satisfy the requirements of Competency 3 for a Foundations (Concrete foundation walls and concrete slab-on-ground) Licence.
- 6.5 The Board also 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 foundation walls and concrete slab-on-ground) Licence.
- 6.6 Whilst there was some evidence in the documentation placed before the Board, it was insufficient to establish, on the balance of probabilities that the Appellant had carried out foundations work of the type to which the license relates. Without the opportunity to question the Appellant as to his skills and experience, the Board was unable to satisfy itself that the requirements of the competency had been met. The Appellant should obtain practical on-the-job experience of carrying out foundations work prior to re-applying to be licensed.

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 [REDACTED] with a Foundations (Concrete foundation walls and concrete slab-on-ground) 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 29th day of October 2019



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.”*