

BPB Appeal No. A0002

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 The Appellant applied for a Design 1 License under the Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007 ("the Rules")¹.
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under s.310 of the Act, declined the Appellant's application under Rule 12 and the Appellant was notified of the Registrar's decision on 4 July 2008, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 9 July 2008, the Appellant appealed to the Board against the Registrar's decision under s.310(1)(a) of the Act and seeking that, on the basis of information provided, the Board re-consider his application for a Design 1 Class License.
- 1.4 The appeal was considered by the Board in Auckland on 20 October 2008, in accordance with the Board's "Appeals Procedures".

The Procedures provide that appeals are heard by way of a "re-hearing" and that the burden of proof lies with the appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedures).

- 1.5 Those present for the duration of the hearing of the appeal were:

The Appellant

Alan Bickers	Board Chair (Presiding),
Paul Blackler	Board Deputy Chair,
David Clark	Board Member,
Jane Cuming	Board Member,
Patrick Lawrence	Board Member,

¹ The Appellant had been successful in respect of his applications for Carpentry and Site 1 License Classes.

Graham Moor	Board Member,
David O'Connell	Board Member,
Colin Orchiston	Board Member.

Tracy Goddard	Board Secretary
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Mark Scully	Acting for the Registrar
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No members of the public were in attendance.

The Board's deliberations were conducted in private, with the Board Secretary being the only other person in attendance.

2. Background

2.1 On 27 February 2008, the Appellant submitted his application to the Registrar to be licensed as a Design – Class 1 Building Practitioner. The application was treated as complete on 27 February 2008 and the application proceeded to assessment (under Rule 11).

2.2 The application was assessed on 8 March 2008 and noted the Appellant's letter attached to his application, explaining that he was unable to provide all of the documentation required by the checklist. The Assessor requested disclosure of information from the Appellant (under Rule 8). In particular, the Appellant was requested to provide details of minimum standard of competence (under Rule 4). The Appellant advised the Assessor that he had the relevant information on 18 March 2008, and the application proceeded to a face-to-face assessment (under Rule 11).

2.3 The assessment was completed by the Assessor on 31 March 2008, and a peer review was completed on 4 April 2008.

2.4 The Assessor recommended to the Registrar that the Appellant's application should be declined (under Rule 11).

2.5 After taking into account the recommendation of the assessor and the requirements of section 286 of the Act, the Registrar decided to decline the application (under Rule 12).

2.6 On 4 July 2008, the Appellant was formally notified of the Registrar's decision to decline the application, and of his right to appeal the decision within 20 working days (under Rule 13(3)).

2.7 On 25 July 2008², the Appellant appealed to the Board against the Registrar's decision and set out his grounds of appeal.

² The appeal is dated 9 July 2008, but was received by the Registrar on 25 July 2008.

3. Appellant's Case

- 3.1 In his written appeal, the Appellant stated that in undertaking design work he confines himself to small scale renovations and additions to dwellings which he will construct himself as builder. He also stated that he does not undertake design work beyond his level of competence. His design work and drawings have been accepted by the local authorities, in whose territorial districts he works, as sufficient for the issue of a building consent.
- 3.2 The Appellant stated in his submission that the design work which he undertakes arises from his clients seeking to engage his services as a builder for small additions and alterations, mainly to dwellings, and he is able to prepare concept plans for discussion, working drawings and obtain the consent for the work he will undertake. He indicated that he does not charge for this service which is incidental to this building work.
- 3.3 The Appellant submitted that the service he provides is important in the small community within which he works and that without it his clients would incur the additional expense of engaging an architect or architectural designer. He was concerned that, if this was to occur, he might suffer a reduction in his building work, because he would be "out of the loop". He also doubted that there would be much interest in the small scale of work his clients required.
- 3.4 The Appellant submitted that the Board should approve the issue of a License of a Design 1 License Class, having regard to the nature of the work which he undertook and the limited geographic area of his operations.
- 3.5 The Appellant tabled his complete files of documents for 3 projects for examination by the Board.
- 3.6 In response to questions from the Board, the Appellant advised as follows:
- (a) That he understood that the Design 1 License would allow him to design a Category 1 building, but he intended to confine the scope of his work to what he was currently undertaking;
 - (b) He does not undertake design work for others to build;
 - (c) He considered that the level of detail required on the drawings for alteration and/or additions, was the same as for a new building.
 - (d) That as a sole practitioner he has not documented all his procedures and that there was no need for that as he builds his own designs, but that he did have a health and safety policy;
 - (e) That he subscribes to some technical publications to keep himself up to date and attends information sessions by merchants and local authorities; and
 - (f) He does not produce full contract documents because he is the builder of what he designs.
 - (g) He was unaware of the provisions of the Construction Contracts Act.

4. Registrar's Report

- 4.1 A written report was received from Nigel Bickle, the Registrar, which was introduced by Mr Scully on the Registrar's behalf. The report covered the following:
- 4.2 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).
- 4.3 The minimum standards are set out in Schedule 1 to the Rules, and take the form of "competencies" which must all be satisfied 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.
- 4.4 These competencies may be demonstrated by meeting some or all of the performance indicators that are also set out in Schedule 1 (Design 1 competencies) of the Rules. In carrying out an assessment, the Assessor must use methods prescribed by the Registrar (see Rule 11(1)).
- 4.5 The competencies address a broad range of skills and knowledge a design practitioner should be able to demonstrate. These address the skills and knowledge necessary for a designer to be able to satisfactorily demonstrate compliance with the New Zealand Building Code. However, the competencies also address other skills that a competent designer is expected to demonstrate, for example managing the design process or establishing a design brief.
- 4.6 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).
- In the Registrar's view, the Assessor:
- (a) is a reputable and experienced practitioner,
 - (b) has been selected as a person appropriate to be an Assessor and has been trained in assessment,
 - (c) has met the Appellant and reviewed his design work first hand.
- 4.7 Reliance on the Assessor 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. However, in the normal course of events the Registrar will accept a recommendation of the Assessor, unless there are strong reasons for not doing so.

- 4.8 In making the recommendation to decline the application, the following reasons were recorded by the Assessor:
- (a) Correspondence showing management of building design process (Competency 2) was limited.
 - (b) Establishing design briefs and scope of Works (Competency 3) was limited.
 - (c) Contracts were only verbal contracts.
 - (d) Site investigations were left to the owner (Competency 3).
 - (e) Specifications were limited and drawings were limited and sketchy (Competency 4).
 - (f) Very little description on details supplied for all 3 projects submitted.
 - (g) No Health and Safety policy as a designer or builder and appears unclear on requirements.
- 4.9 The Assessor suggested that the Appellant has the capability to become Design 1 approved. The Appellant needs to document, record and formalize his work practices in more detail than he is currently providing. The Appellant also needs to take greater responsibility towards site investigation and planning requirements and formalize contracts with the client. The Assessor suggested that the Appellant should implement this for upcoming projects and reapply at a later date.

5. Appellant's Summary

- 5.1 In his summary, the Appellant reiterated that the nature of his design work was confined to small scale projects which he would build himself. The projects were generally located mainly in the Matamata Piako, Hauraki and Thames Coromandel Districts.
- 5.2 The Appellant requested that there be no publication of his name following the Board's decision on his appeal. He did not seek any award of his costs.

6. Registrar's Summary

- 6.1 Mr Scully advised that the Registrar was not seeking payment of his costs relating to the Appellant's appeal.

7. Board's Findings

After due consideration of the Appellant's submissions, evidence and the Registrar's report, the Board found as follows:

- 7.1 That it concurred with the Assessor's view that the Appellant demonstrated that he met sufficient of the performance indicators of Competencies 1 and 2 to demonstrate that –
- (i) he could comprehend and apply knowledge of the regulatory environment of the building construction industry, and
 - (ii) he could manage the building design process.
- 7.2 That in respect of the performance indicators for Competence 3 (Establish design briefs and scope of work and prepare the preliminary design), that the Appellant could demonstrate that he could meet some of these, albeit that he did not have documented policies and operating procedures. In some cases

he did not meet the indicator because his primary role was builder and not that of a designer. The Board considered that the Appellant could marginally meet the Competency 3 requirements.

7.3 In respect of the performance indicators for Competency 4 (Develop, design and produce construction drawings and documentation) the Board concluded that:

- (a) The Appellant had not demonstrated that he could apply design standards and produce construction drawings and documentation;
- (b) The documentation produced by the Appellant exhibited a basic understanding of the principles of building technology and performance but this was less than was expected by the competency requirements for the Design 1 License.
- (c) He had demonstrated that he could coordinate and integrate the specialist design inputs of others, such as Engineers, when required.
- (d) Because he carried out design works only for his own construction and did not produce contracts, he could not demonstrate that he met performance indicators 4.4, 4.5, 4.6 and 4.7.

The Board, therefore, concluded that the Appellant had not demonstrated that he could meet sufficient of the performance indicators of Competency 4 for it to agree that he met the minimum requirement of Competency 4.

7.4 The Board noted that in order to meet the requirements of the Design 1 License Class, that Rule 4(1) states:

“The minimum standard of competence for a class of license is meeting all of the competencies set out for that class of license in Schedule 1”.

7.5 The Board has considered the Appellant’s original application, the additional information provided at the hearing and his submissions. The Board has not been satisfied that the Appellant has demonstrated that he can meet sufficient of the performance indicators to meet the requirements of Competency 4 for the Design 1 License Class.

7.6 The Board does not consider that the fact that a local authority accepts the designer’s documents as adequate for the purposes of issuing a building consent is a sufficient demonstration of the competencies required for a Design 1 License.

While this may represent that some of the indicators for Competency 4 may be met, an applicant for a Design 1 License must demonstrate compliance with all competencies required by consistently meeting a sufficient number of performance indicators.

7.7 The Board noted the Appellant’s submissions that he only undertakes design work of a limited scope which he constructs himself, and the geographic scope of his operations.

The Board does not, however, have any legal authority to grant the Appellant or any other applicant, a License based on a defined or limited scope of work

and/or area of operations. Hence, while it understands the Appellant's situation, if a License was issued to the Appellant its scope would be for the full extent of restricted work (yet to be defined) requiring such a License.

8. Board's Decision

- 8.1 The Board has resolved by unanimous decision to confirm the decision of the Registrar to decline the Appellant's application for a Design 1 License.
- 8.2 The Board's reasons are that the Appellant has not demonstrated that he meets the standards for Competency 4 required by the Design 1 License.
- 8.3 The Board has resolved that the Appellant and the Registrar meet their own costs of the appeal.
- 8.4 The Board directs that there be no publication of the Appellant's name, but the salient points of the Board's decision may be published.
- 8.5 That the Appellant be advised that under the provisions of s.330(2) of the Act, he may appeal the Board's decision to the District Court.

Signed and dated this day of November 2008.

Alan Bickers
Chairman
(Presiding Member)