

BPB Appeal No. A0001

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 Class License under the Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007 ("the Rules").
- 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 1 April 2008, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 14 April 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 additional information, the Board re-consider his application for a Design 1 Class License.
- 1.4 The appeal was considered by the Board in Christchurch on 10 June 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).

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

The Appellant
The Appellant's wife

Alan Bickers	Board Chair (Presiding),
Paul Blackler	Board Deputy Chair,
David Clark	Board Member,
Jane Cuming	Board Member,
Patrick Lawrence	Board Member,
Graham Moor	Board Member,
David O'Connell	Board Member,
Colin Orchiston	Board Member.

Tracy Goddard	Board Secretary
Mark Scully	Acting for the Registrar
Sharn Christensen	Licensing Officer

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 8 November 2007, The Appellant submitted his application to the Registrar to be licensed as a Design-Class 1 Building Practitioner under s.288(2) of the Act. The application was incomplete and the Registrar twice requested further information from The Appellant (under Rule 8). In particular, the Appellant was requested, but did not provide, details of a second referee who could attest to his work record (under Rule 7(1)(k)).
- 2.2 Despite the incomplete information, the application was accepted for assessment on 23 January 2008, and the application proceeded to a desktop and face-to-face assessment (under Rule 11). The assessment was completed by the Assessor on 14 February, and a peer review was completed on 25 February.
- 2.3 The Assessor recommended to the Registrar that the Appellant's application should be declined because of "insufficient evidence" (under Rule 11). The Assessment Report noted that Competencies 2 and 3 were demonstrated, but that Competencies 1 and 4 were "*only marginally met*".
- 2.4 After taking into account the recommendation of the Assessor and the requirements of s. 286 of the Act, the Registrar decided to decline the application (under Rule 12). The Registrar based his decision solely on the Assessor's recommendations to decline the application. The Registrar did not consider that there was sufficient reason or concern to overrule the Assessor's recommendation.
- 2.5 On 1 April 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)).
- 2.6 On 14 April 2008, The Appellant appealed to the Board against the Registrar's decision and set out his grounds of appeal. Upon request, a further summary of these grounds of appeal was provided by the Appellant to the Board on 15 May 2008.

3. Appellant's Case

3.1 The Appellant presented written submissions to the Board and spoke to these.

3.2 In respect of the Assessor's comments that the documentation submitted by The Appellant was "minimal", the Appellant submitted that:

- (a) Building consents had been granted by the Ashburton District Council, Christchurch City Council and Waimakariri District Council, based on his design documentation and this constituted proof of the sufficiency of his documentation.
- (b) As his designs were based on NZS 3604 : 1999 and this was an implied document together with the NZ Building Code, additional detailed information was unnecessary.

3.3 In respect of the Assessor's comment that "*I have concerns about his ability to consistently provide the competencies required of Design 1 level*", the Appellant again argued that his designs had been accepted by three different territorial authorities for building consent and that the quality of his work would not decrease over time and would improve.

The Appellant tabled additional drawings for the Board's examination, which differed in quality and style from those previously submitted, in that they were computer generated and not hand drawn, as were the original documents.

3.4 The Appellant referred to the Assessor's comments that he was "*'self-taught' as a draughtsman with limited experience*" and that he had no peer group affiliation. The Appellant submitted that formal training was not a requirement for a Design 1 level license and that involvement with the construction contract was similarly unnecessary. He submitted that he had gained sufficient experience from 2003 to demonstrate his competence. With reference to peer group affiliation, the Appellant submitted he utilised different tradesmen and contractors and sought to be independent of any commercial alliances.

3.5 The Appellant's written submissions also contained a schedule which indicated that over the last 5 years he had designed 5 building projects and he was owner of two of these.

3.6 In response to questions from the Board, the Appellant responded that:

- (a) His latest (computer drafted) plans had not been seen by the Assessor;
- (b) That he would seek the advice of an Engineer if a client wanted a design which was outside of the scope of NZS 3604;
- (c) He seeks advice on occasions from an Architect in Rangiora;
- (d) That he relies on the local authority's building consents and compliance unit to provide him with technical advice on critical technical matters;
- (e) With private clients he seeks to understand the Client's objectives and requirements, size of the building and rooms and the indicative budget;

- (f) Other than the Building Code and NZS 3604, he did not refer to any specific documents relating to weathertightness, other than reproducing manufacturers'/suppliers' information.

4. Registrar's Report

4.1 A written report was received from Nigel Bickle, the Registrar, which was read 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 s. 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) The Assessor's view was that the Appellant's documentation was minimal,
 - (b) The Assessor did not consider that the Appellant would consistently meet the required competencies,
 - (c) The Assessor was concerned that the Appellant was self-taught, lacked experience, and was without peer group affiliations,
 - (d) The Assessor considered that Competencies 1 and 4 were only marginally met,
 - (e) The Assessor noted that the Appellant needed more experience and better evidence before he could become licensed.

The Assessor acknowledged that the Appellant's design documentation would "probably" result in building consents being granted and projects being able to be built from that documentation.

However, the Assessor's recommendation to decline the application due to insufficient evidence reflected the requirements in the Rules that a broader set of competences must be satisfied.

- 4.9 The Registrar had based his decision on the Assessor's recommendation, as there was insufficient reason to depart from that.

- 4.10 In response to questions from the Board, Mr Scully stated:

- (a) That the issue of a building consent was not sufficient to demonstrate that the required competencies for a Design 1 License had been demonstrated;
- (b) That the Assessor's report did state that Competencies 1-4 had all been met, although 1 and 4 were considered to be "marginally met";
- (c) The decision to decline the application was based on the Assessor's recommendation.

5. Appellant's Summary

- 5.1 In his summary, the Appellant stated:

- (a) In the face-to-face assessment he was confused by some of the Assessor's questions;
- (b) He does not want to involve himself in the construction process only with the design of residential buildings;
- (c) That he focused on the requirements of NZS 3604 and to a limited degree the Building Code.

- 5.2 In response to a request by the Chairman, the Appellant confirmed that he sought no publication of his name

6. Registrar's Summary

- 6.1 Mr Scully advised that the Registrar was not seeking payment of the costs of the appeal from the Appellant.

7. Board's Findings

- 7.1 After due consideration of the evidence and submissions the Board found that:

- (a) The Appellant had not demonstrated a sufficient knowledge of the regulatory environment of the building construction industry and relied heavily on the local authority's building consents and compliance units;
- (b) That he had not demonstrated to the Board's satisfaction an ability to comprehend and apply the Building Code and Building Code compliance documents such as E2/AS1;
- (c) That he had minimal understanding and experience of construction contracts;
- (d) His understanding of the licensing scheme was limited;
- (e) His understanding of roles and responsibilities of key parties in the design and building process had not been demonstrated to the Board's satisfaction;
- (f) His understanding of the need for specialist expertise was largely limited to the scope of NZS 3604.

The Appellant had not demonstrated to the Board's satisfaction that he met sufficient of the performance indicators to meet the requirements of Competency 1.

- 7.2 The Board was satisfied that the Appellant met the requirements of Competencies 2 and 3.

- 7.3 In respect of the performance indicators for Competency 4, the Board decided that:

- (a) Because the Appellant did not appear to be aware of the necessary design standards, he had not demonstrated he could consistently apply them;
- (b) Because he relied heavily on local authorities for advice, he had not demonstrated to the Board's satisfaction that he could consistently apply knowledge of principles of building technology;
- (c) He had insufficient experience of how to coordinate and integrate specialist design inputs;
- (d) His preparation of non-graphical documents for buildings, such as specifications, was minimal.

The Appellant had not demonstrated to the Board's satisfaction that he met sufficient of the performance indicators to meet the requirements of Competency 4.

7.4 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 Competencies 1 and 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.

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

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 Competencies 1 and 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 June 2008

Alan Bickers
Chairman, Building Practitioners' Board
(Presiding Member)