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The future of occupational licensing in the building sector, as it affects those who design the built environment

The Government has ordered that the many occupational licensing schemes throughout the New Zealand economy be reviewed. As part of this, the Department of Building and Housing is reviewing the various occupational licensing schemes in the building sector, including for all those who design the built environment.

The Department recently held a workshop on terms of reference for the review and asked the NZRAB, along with the sector's other registration entities, to give their thoughts. Prompted by this, the New Zealand Registered Architects Board (NZRAB) has been rethinking how it operates and has come to some views regarding what should happen if change is going to take place. Any decisions, however, will be made by the government and not the NZRAB.

The NZRAB Board on 16 March 2010 resolved that:

the NZRAB shall advocate to the review that:

- 1. the NZRAB needs a set of institutional arrangements that are permissive rather than prescriptive*
- 2. a mechanism is required to give clarity to the public about firms offering architectural services in terms of what services they provide and who does or supervises the work*
- 3. the NZRAB's mandate be extended to include the registration of designers, subject to appropriate institutional arrangements being in place.*

This paper outlines the basis of the NZRAB's thinking, as expressed in the three-point resolution above. The most detailed explanation is given to the third point, given that of the three it is the most challenging and, for those potentially affected, the most important.

1. The NZRAB needs a set of institutional arrangements that are permissive rather than prescriptive.

Currently the NZRAB is hamstrung by inflexible legislation and inflexible rules, via the New Zealand Registered Architects Act 2005 (the Act) and the Registered Architects Rules 2006 (the Rules). The NZRAB began registering architects in 2006. Since then it has gained significant experience in terms of what works well and what doesn't. However, in a number of cases the NZRAB has not been able to evolve and develop its procedures as it would like because the Act and the Rules impose specific requirements which, with the gift of hindsight, are clumsy and unnecessary.

For example, the NZRAB is required by its Accountability Agreement with the Minister to fully complete the processing of complaints against architects within 12 months, this being seen as consistent with natural justice. However, the procedures required by the Act and the Rules are so time consuming that this is very difficult to achieve. The NZRAB Board has determined how it would like to reform and simplify its complaints procedures, but cannot do so without a change to the Act, which is very difficult to obtain.

The Act and the Rules are distinctive in that they are almost completely silent about what the NZRAB is meant to achieve, the only reference being the statement in section 3 of the Act that the Act's purpose is to "protect the title of Registered Architect."

Conversely, the Act and the Rules are very detailed in terms of what the NZRAB must do, including step-by-step descriptions of the procedures that must be followed for the NZRAB to carry out its various functions.

Though this is an inference, the Act and the Rules seem to assume that the NZRAB can not be relied upon to carry out its duties professionally and with due care, and therefore highly-detailed mandatory instructions are required to keep the NZRAB on task.

In the NZRAB's view, a "high trust" set of institutional arrangements would better allow the NZRAB to evolve its policies and procedures as its experience grows and as circumstances change. The NZRAB favours having an Act and Rules that describe in more detail the outputs that the NZRAB is required to deliver and the outcomes that these are meant to achieve. Then the Act and the Rules should, for the most part, be silent on how the NZRAB should deliver and achieve the required outputs and outcomes, that being for the NZRAB Board to determine.

This does not mean the NZRAB should be less accountable. In fact, a high-trust model, as described, would make the NZRAB more accountable, in that a higher performance benchmark would have been set. With low-trust governance arrangements, when failures occur it is too easy for those

responsible to hide behind their institutional arrangements, saying "It's not our fault that it didn't work – we followed the rules". In a high-trust model that's not possible.

Most importantly, if the NZRAB had more open-ended institutional arrangements it would be able to carry out its duties better now.

2. A mechanism is required to give clarity to the public about firms providing architectural services in terms of whether or not architects are providing the service offered.

With the gift of hindsight, the protection of title that the NZRAB enforces is inadequate in terms of the public interest. Under the Act only Registered Architects may use the title "Registered Architect", or the title "architect" when offering or providing building design services, and it is an offence for anyone else to do so. The problem with this is that misinformation and confusion over the title "architect" can impact on the public in other ways than just an individual falsely pretending to be an architect.

There are two common forms of this. Often clients employ a company or a practice rather than an individual. In that situation, it may be difficult for the client to ascertain whether or not the person(s) responsible for the work is or is not an architect. This can happen when the trading name of a practice is ambiguous.

Also, sometimes third parties claim that a person who designed a building was an architect when this is not true. Often this is done by a real estate agent trying to talk up the price of a property at the buyer's expense.

Solutions need to be found. In some other jurisdictions architectural practices have to be registered as well as individual architects (eg New South Wales), while another option is restrictions on the trading names that companies can register if the names might confuse the public (eg Singapore). Also, the Act could be extended, so a third party falsely describing a person as an architect would be committing an offence.

3. The NZRAB's mandate be extended to include the registration of designers, subject to appropriate institutional arrangements being in place.

The NZRAB is supporting the reform proposal put forward by the Institution of Professional Engineers New Zealand (IPENZ) that the sector as a whole should be organised into three registration entities, registering respectively:

- chartered engineers and technical engineers
- the various building trades
- architects and designers.

Regarding architects and designers, the background to this is as follows.

Currently:

- anyone can design a building
- registration via the NZRAB is compulsory for architects
- there is no requirement that designers be registered or licensed, though voluntary licensing is available for designers through the Licensed Building Practitioner (LBP) Scheme.

At the moment, these arrangements are working well for architects. However, the context in which architects and designers work is about to change as a result of amendments already made to the Building Act and government announcements.

From 1 March 2012, under the **restricted work** requirements of the Building Act, anyone designing a house or small apartment must be either a Registered Architect or a Licensed Building Practitioner – Design (see attachment 1).

This means, from 1 March 2012, architects and designers will enter a new phase. Specifically:

- architects will still have an exclusive right to the use of their title
- designers for the first time will have, in effect, an exclusive right to their title (LBP-Design)
- both groups will have a combined exclusive right to an area of **work** – designing houses or small apartments at the level of being the person who signs off on the work.

As things stand, one entity (NZRAB) registers architects and another (the LBP Scheme) licenses designers, along with the trades – carpenters, site managers, roofers, block layers and so on. This begs the question, post 1 March 2012, will it still be sensible for architects and designers to each be registered or licensed by separate entities, as at present?”

The NZRAB’s thinking, so far, is that when the restricted work requirements of the Building Act come into effect, then for the public, for architects and for designers, it would be better if a single entity registers both groups. This would best provide the public, architects and designers with clarity and consistency regarding the allowable use of titles, and the competencies and services represented by them.

Thus the NZRAB has suggested to the Department that the NZRAB’s mandate be extended to include the registration of designers as well as architects, so long as appropriate institutional arrangements can be put in place.

Managing the boundaries

The main argument for a combined registration entity is that, given restricted work, there will be an increased risk of confusion about what constitutes a designer, what constitutes an architect and where they overlap in terms of the work they do.

Already the public struggles to delineate between architects, designers and drafters. If designers and architects continue to be licensed or registered separately, and both have in effect protected titles, then the risk of overlapping and contradictory communications leading to misunderstandings will grow.

An example of these issues from another sector is the treatment of mental illness by psychiatrists, psychologists, psycho-therapists and counsellors, often leading to inter-professional rivalry and confusion for patients. Psychiatrists, psychologists and psycho-therapists are each registered by different entities, and counsellors do not have to be registered. By contrast, inter-level respect, courtesy and clarity of roles is the norm among the various types of engineers registered within IPENZ.

If a combined registration entity were to register both groups, these boundary questions could be managed pragmatically and coherently, especially as the two groups learn to work together. A consensus could be communicated to clients and the public as to what architects and designers have in common and where they differ in terms of the services that they provide and the skills that they have.

Pathways to advancement

Another argument for a single registration entity is that it would better ensure that the competencies required of designers and of architects interconnect in such a way as to incentivise practitioners to further invest in their skills and knowledge. Thus designers, if they wish, could further build their skills and knowledge to such an extent that in time they could become Registered Architects.

Currently the NZRAB has a procedure for this (Registration Pathway 5¹) by which long-standing designers can have their skills and experience recognised for registration as an architect. Typically about two designers do this a year. Without in any way compromising the standard required for registration as an architect, a single registration entity should be able to encourage this process.

What are the arguments against a single registration entity?

The main argument against such an arrangement is the risk that the NZRAB's current focus on the full breadth of skills and professional commitments required of architects could be lost. This could happen if the priority became

¹ <http://www.nzrab.org.nz/default.aspx?Page=123>

the LBP Scheme's narrower interest in just ensuring that buildings are weather-tight and structurally sound. Architecture is much more than that.

A combined registration entity would need to stay committed to protection of title, based on a holistic assessment of competence and professionalism. A combined entity would thus have at least two titles to protect – one for architects and the other for designers.

For this, it would be essential that a new combined registration entity would have its own statute, with protection of title and clarity for the public as its focus, as is the case for the Registered Architects Act 2005 at present.

It would then be a separate matter that the Building Act requires that from 1 March 2012 only architects and designers design houses or small apartments. Indeed, were a future government to abolish restricted work, the registration of architects and designers should be able to continue as a way of giving the public clarity about services and competence.

Standards

A combined entity would need to establish a set of competency standards for designers in the same way as for architects. This has already been done within the LBP Scheme, but a combined entity would need to take responsibility for this, once the entity was up and running. The current registration requirements for architects in most cases are:

- a recognised qualification
- sufficient work experience under the supervision of a Registered Architect
- demonstrable competence assessed via the presentation of case studies to a panel of two assessors who are senior architects.

An equivalent criteria would be required for designers. Done right, the registration requirements for architects and designers should interlock. Hypothetically, over time the standard for designers might be:

- a recognised qualification
- sufficient work experience under the supervision of a registered designer
- demonstrable competence assessed via the presentation of case studies to a panel of two assessors who are senior designers.

The government has said that by 2015 a recognised qualification will be one of the minimum requirements for registration as licensed building practitioners, just as it is now in most cases for architects.

Conclusion

At the moment architects are compulsorily registered by the NZRAB and designers are voluntarily licensed by the LBP Scheme. Arguably, once being registered or licensed is compulsory for architects and designers:

- the interest of the public, architects and designers will best be protected by both groups being regulated in a coherent and integrated way
- architects and designers will have a shared interest which can best be protected by architects and designers **together** taking responsibility for the way they are regulated.

- **Attachment 1**

On 15 October 2009 in a text² prepared for an address to a gathering of NZRAB registration assessors, Building and Construction Minister Maurice Williamson said the following:

“From 1 March 2012, only a licensed building practitioner will be able to carry out restricted building work. Restricted building work is critical to the integrity of a building and should only be done by a licensed person. Restricted building work on stand-alone houses and small- to medium-size apartments will apply to the design and construction of:

- foundations and framing, so that the building can withstand vertical and horizontal loads; and
- roofing and cladding, so that the building is weathertight.

Restricted building work will also apply to the design of active fire-safety systems in small- to medium-size apartments. Clearly, this work relates to building safety, weathertightness and durability and it must not be compromised.

Given the rigour of architects' training and registration in New Zealand, registered architects have been automatically included within the 'Design 3 licensing class' and so you and your colleagues will not need to apply to be licensed.”

² <http://www.beehive.govt.nz/minister/maurice+williamson>