

**BPB Appeal No. A1107**

**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 **the Appellant** 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:	22 April 2013 at [omitted]
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Appeal heard by:	Bill Smith Colin Orchiston Brian Nightingale Jane Cuming	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant  The Registrar, Mark Scully, was available by telephone but was not required to participate.
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## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Bricklaying and Blocklaying Area of Practice (AOP) 2: Structural Masonry 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 Bricklaying and Blocklaying AOP 2: Structural Masonry Licence application and notified the Appellant of his decision by letter dated 21 August 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 26 September 2012, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 5 April 2013 the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

## 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 to the Rules. In determining whether a person met a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1<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 Bricklaying and Blocklaying Area of Practice 2: Structural Masonry 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 and 4 for a Bricklaying and Blocklaying AOP 2: Structural Masonry Licence.

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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

**Bricklaying and Blocklaying AOP 2: Structural Masonry Licence:**

*Competency 2: Demonstrate knowledge of current bricklaying and blocklaying trade practice.*

*Competency 4: Carry out masonry work.*

**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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 22, the following from the Assessor's recommendations:

" ...

- *From 1980 to 1983 [the Appellant] was carrying out building work with his [omitted].*
- *1983 to Present [the Appellant] has been working as a self employed builder and blocklayer.*
- *[The Appellant's] work experience is very vague and mainly involves projects in the rural sector primarily on farm and dairy sheds.*
- *[the Appellant] was unsure of the full dates that he worked on the projects provided in his application.*
- *The assessor requested two new projects from [the Appellant] as the ones provided were inadequate and did not show the full range of structural block work.*
- *The referees that [the Appellant] provided were supportive of this application and confirmed he can carry out block work; however the jobs provided were small to low level work.*
- *[The Appellant] provided two new projects however these projects were of the same nature as the ones he provided in his application. The jobs provided by [the Appellant] had no real structural element to them and were of low level work.*
- *Discussions over the phone with [the Appellant] in regards to his Job Records Questionnaire were vague and lacked information.*
- *[The Appellant's] answers, in his phone conversation, were correct and relevant to the projects he had provided, however when the same questions were asked in regards to general blocklaying jobs, [the Appellant] was unsure and vague with his answers.*

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

- *[The Appellant's] trade knowledge was lacking in information and required further clarification from the assessor.*
- *[The Appellant] was unable to demonstrate Competencies 2 and 4. This is due to the lack of and limited knowledge of the current trade practice and the low complexity and size of the projects provided.'*

*The basis for the Registrar's decision to decline the application.*

4.3 The Registrar concluded:

*"25. I reviewed the assessor's assessment report and [the Appellant's] application.*

*26. I based my decision on the assessor's recommendations, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendations."*

## **5.0 Appellant's Submissions**

5.1 The Appellant described himself as a self-employed contractor who has done a wide variety of agricultural construction work over the past 30 years.

5.2 He primarily builds or alters feedpads, silage pits, effluent retaining structures and alteration work associated with cowsheds. This work involves excavation and civil works including concrete slabs, structural masonry and general metal work.

5.3 With respect to his structural masonry work this consisted of fit for purpose and farm end use walls generally up to 2 metres above and below ground. They generally take about two months to construct.

5.4 The Appellant said that generally the work that he carried out had neither specific design nor a building consent.

5.5 The Appellant described that many of these structures involved the containment of effluent and were constructed to resist ground water infiltration.

5.6 The Appellant indicated that he would like to be in the position to undertake residential blockwork in the future

5.7 The Appellant stated a preference for rural work, such as cow herd facilities and retaining walls. He raised the possibility of building his own house before he retired.

## **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Bricklaying and Blocklaying AOP 2: Structural Masonry Licence:

### **Bricklaying and Blocklaying AOP 2: Structural Masonry Licence:**

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

*Competency 3: Carry out planning for masonry work.*

- 6.2 The Board then considered Competencies 2 and 4 for a Bricklaying and Blocklaying AOP 2: Structural Masonry 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.
- 6.4 The Board was concerned that the range of structural masonry work carried out by the Appellant was too limited to be able to demonstrate the skills and knowledge set out in the performance indicators for Competencies 2 and 4.
- 6.5 Whilst the Board considered that the Appellant demonstrated adequate knowledge and skills in the scope of work that he does, the Board's view was that he did not demonstrate a sufficient depth of knowledge and skill for the work that competencies 2 or 4 apply to.
- 6.6 The Board notes the provisions of s. 314B of the Act which state that:

*"A licensed building practitioner must –*

- a) Not misrepresent his or her competence;*
- b) Carry out or supervise building work only within his or her competence."*

- 6.7 A number of the projects presented to the Board appeared to contain structural elements that required specific engineering. The Appellant appeared to be reliant on the standard solutions provided in the New Zealand Concrete Masonry Manual for his design information.

#### *Board's findings*

- 6.8 The Board by a majority decision considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 and 4 for a Bricklaying and Blocklaying AOP 2: Structural Masonry Licence.
- 6.9 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Bricklaying and Blocklaying AOP 2: Structural Masonry 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 the Appellant with a Bricklaying and Blocklaying Area of Practice 2: Structural Masonry Licence. The appeal is therefore declined.**

**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 9 day of July 2013.

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Brian Nightingale  
(Board Member)

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**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.”*