

BPB Appeal No. A1169

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

DECISION OF THE BUILDING PRACTITIONERS BOARD

Date and location of hearing:	1 July 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Richard Merrifield	Presiding Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (witness for Appellant) The Registrar's delegate, Sharn Christensen, 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 Carpentry and Site Area of Practice (AOP) 2 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 14 January 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 19 February 2013, 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 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 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 Carpentry and Site Area of Practice 2 licence.

- 3.3 In light of 335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 1, 2, 3 and 4 for the grant of a Carpentry licence, and Competencies 1, 2, 3, 4 and 5 for the grant of a Site AOP 2 licence.

Carpentry Licence Competencies:

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

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

- Competency 2: Demonstrate knowledge of current building and trade practice*
- Competency 3: Carry out planning and scheduling for Carpentry work*
- Competency 4: Carry out Carpentry work*

Site AOP 2 Licence Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry*
- Competency 2: Apply technical knowledge of construction methods and practice*
- Competency 3: Organise and manage building projects*
- Competency 4: Manage personnel*
- Competency 5: Provide technical supervision*

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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 21, in respect of the Appellant's application for a Carpentry and Site AOP 2 licence, the following from the Assessor's recommendations:

" ...

- *From 1970 to 1972 [the Appellant] was a Technician Draughtsman for the [omitted] in the [omitted].*
- *1974 to 1984 [the Appellant] was self employed carrying out renovations and refurbishments to residential homes in [omitted] for re-sale.*
- *From 1984 to 2008 [the Appellant] was an Owner/ Manager of a construction company carrying out a large number of building jobs all over [omitted]. This work included residential, light commercial, shop fit outs, and some civil engineering work.*
- *From 2010 to present [the Appellant] is a self employed Company Manager. His role is an [omitted] for insulation to residential buildings for the South and lower North Islands.*

Carpentry

- *[The Appellant] has carried out a large range of building work and was very capable; however he has not been carrying out Carpentry work for at least five years and the projects he provided are well out of date.*
- *[The Appellant] was unable to provide recent projects he carried out Carpentry work on.*
- *[The Appellant's] work history and career progression is consistent with his work history documentation. His Carpentry role, when he was building, was relevant to the licence class criteria.*

⁷ clause 10 and 11 of the Rules

- *[The Appellant's] regulatory knowledge is not at an acceptable level.*
- *[The Appellant] has not carried out any building work for at least the past five years.*

Site

- *[The Appellant's] work history and career progression is consistent with his work history documentation. His Site role, when he was building, was relevant to the licence class criteria.*
- *[The Appellant's] regulatory knowledge is not at an acceptable level.*
- *[The Appellant] has not carried out any building work for at least the past five years as he is currently in the mentoring and insulation business."*

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

4.3 The Registrar concluded:

"22. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.

23. I reviewed the assessors report and [The Appellant's] applications.

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

5.0 Appellant's Submissions

5.1 The Appellant's submissions relied on his past experience and the references in his written material. The Board's questions to the Appellant focused on the performance indicators in the competencies.

5.2 The Appellant submitted that he had owned and operated his own construction company for many years, but was currently involved in a limited area of the building industry.

5.3 The Appellant described his role in projects as being in control of the overall site organisation and staff management. As required, he worked on the site alongside the tradesmen. He estimated that he spent between 4 and 17 hours of each work day on site.

5.4 The Appellant advised that his motivation for seeking his licenses was to provide himself with a broader range of future options. Such options included project management or site supervision; but he was not particularly looking to re-establish a building company.

6.0 Board's consideration

Carpentry Licence

6.1 The Board noted that the Registrar was not satisfied that the Appellant met any of the competencies for the Carpentry Licence.

- 6.2 The Board then considered Competencies 1, 2, 3 and 4 for a Carpentry 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 noted that the Appellant has significant experience in most aspects of the building industry, but, it was concerned that he had not kept up with recent changes in building technology, legislation and regulations.
- 6.5 The Board 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 1 and 2 for a Carpentry Licence.

Board's findings

- 6.6 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Carpentry Licence.

Site AOP 2 Licence

- 6.7 The Board noted that the Registrar was not satisfied that the Appellant met any of the competencies for the Site AOP 2 Licence.
- 6.8 The Board then considered Competencies 1, 2, 3, 4 and 5 for a Site AOP 2 Licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.9 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.10 The Board noted that the Appellant has significant experience in most aspects of the building industry, but, it was concerned that he had not kept up with recent changes in building technology, legislation and regulations.
- 6.11 The Board 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 1, 2 and 5 for a Site AOP 1 or 2 Licence.

Board's findings

- 6.12 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Site AOP 1 or 2 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 Carpentry Licence. The appeal is therefore declined.**

7.2 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Site Area of Practice 2 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 invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.

8.3 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 3 day of July 2013.

Brian Nightingale
(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 license 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.”*