

**BPB Appeal No. A1072**

**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:	17 September 2012 at [omitted]
-------------------------------	--------------------------------

Appeal heard by:	Brian Nightingale Jane Cuming William Smith Richard Merrifield	Presiding Member Board Member Board Member Board Member
------------------	---	--

Appearances by:	The Appellant  The Registrar, Mark Scully, was available by teleconference
-----------------	--

## **1.1 Introduction**

- 1.2 The Appellant of [omitted] applied for Carpentry, Site Area of Practice (AOP) 2 and Design AOP 1 Licences under s 288(2) 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 Carpentry and Site AOP 2 applications and notified his decision by letter dated 1 June 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 The Registrar granted the Appellant’s Design AOP 1 Licence application. This licence is not part of the appeal.
- 1.4 On 5 July 2012<sup>2</sup>, the Appellant lodged an appeal to the Board against the Registrar’s decision not to grant him a licence for Carpentry and Site AOP 2.
- 1.5 At a pre-hearing teleconference on 5 September 2012 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>3</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>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## **3. Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:
  - Issue of Carpentry Licence
  - Issue of Site AOP 1 Licence

---

<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Received by Board Secretary on 5 July 2012.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

- 3.3 In light of s335(4) and the Registrar's decision letter, the Board interprets its inquiry as being restricted to consideration of:

**Carpentry**

- Competency 2: Demonstrate knowledge of current building and trade practice*  
*Competency 4: Carry out carpentry work*

**Site Area of Practice 1**

- 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 recommendation<sup>8</sup>. The Board's Appeals Procedures require the Registrar to provide a report which includes all evidence used to reach the decision, including the Assessors' recommendation.

- 4.2 In making the recommendation to decline the Carpentry and Site AOP 2 licence application, the Registrar noted the following reasons recorded by the Assessor:

- The Appellant's regulatory knowledge is at an acceptable level.
- The Appellant failed to demonstrate an adequate work history in the carrying out of carpentry work.
- The Appellant failed to demonstrate an adequate work history in the AOP Site 2, and his role was not consistent with licence class criteria.
- Both referees were supportive of the Appellant as a designer more than a carpenter or Site AOP 2.
- Both referees were Carpentry and Site Licensed Building Practitioners (LBPs), and both appeared to have held the lead carpentry role in the projects submitted by the Appellant.

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

- 4.3 In regard to the Appellant's Carpentry application, the Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.
- 4.4 In regard to the Appellant's Site application, the Registrar noted that:
- The Appellant's application documents were poorly completed and lacked detail and substance.

---

<sup>8</sup> clause 10 and 11 of the Rules

- The Appellant appears to have struggled to produce verified evidence in support of his claims regarding Carpentry and Site. This should not be difficult to do for a person running a design-build business, and led the Registrar to question whether the Appellant really is working at the level he has presented himself to be working at.
- There was insufficient evidence that the Appellant met Competencies 2, 3, and 4 at Site AOP 2.

## **5.0 Appellant's Submissions**

- 5.1 The Appellant tabled photos of 2 projects as supporting evidence.
- 5.2 The Appellant acknowledged that his original application provided insufficient evidence.
- 5.3 The Appellant outlined his progression from his original trade of toolmaker to managing installation of mechanical items in factory settings to his current role as a design build developer.
- 5.4 Although he had done an apprenticeship in a trade outside the construction industry, the Appellant rated his trade skills as similar to an averagely trained builder and advised that he spent about 15% of his working time on the tools.
- 5.5 The Appellant advised that his work on the tools primarily consisted of set out, foundation, slab and subfloor framing work and from that point he would engage other tradesmen to carry out the remainder of the construction work with assistance from himself. The Appellant would then complete the site works, landscaping and fencing. The Appellant offered the reasons for this as:
- Tradesmen generally didn't like to get their feet dirty, which is why he did the carpentry work of set out and subfloor work.
  - During the rest of the house-build he would be busy developing or designing his next project or subdivision.
  - He would be involved supervising the project.
- 5.6 The Appellant described his supervisory role as:
- Engaging, directing and supervising subcontractors.
  - Arranging and attending all inspections.
  - Obtaining all consents, compliance documents and completion certificates.
  - Resolving technical queries.
- 5.7 The Appellant tabled statements from referees supporting his appeal.

## **6.0 Board's consideration**

### *Carpentry Licence*

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met

Competencies 1 and 3 for the Carpentry licence.

- 6.2 The Board then considered Competencies 2 and 4. 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 his competency.
- 6.4 The Board considered that the Appellant failed to provide sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 and 4 for a Carpentry Licence.

#### *Site AOP 1 Licence*

- 6.5 The Board noted that the Registrar was satisfied that the Appellant met Competency 1 for the Site AOP 2 licence and considered that this also satisfied the requirements for Competency 1 of Site AOP 1.
- 6.6 The Board then considered Competencies 2, 3, 4 and 5. These Competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.7 The Board examined the additional documentation provided by the Appellant but did not carry out a detailed reassessment of this against the performance indicators for these competencies as set out in the Rules as it considered the new evidence required a more detailed assessment.
- 6.8 The Board notes that the Registrar has not been given the opportunity to examine the new evidence for the revised application of Site AOP 1.
- 6.9 The Board has, therefore, decided to require the Registrar to arrange for a reassessment of the Appellant's application against the requirements of Site AOP 1.

#### *Board's findings*

- 6.10 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Carpentry licence.
- 6.11 As stated above the Board is unable to reach a final conclusion as to the demonstrated abilities of the Appellant in relation to the requirements of Competency 2, 3 4 and 5 for a Site AOP 1 Licence.

#### **7.0. Board's Decision**

- 7.1 Pursuant to S.335(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 S.335(3) and S.337(1) of the Act and Clause 3.11.4 of the Board's Appeals Procedure, the Board has resolved to direct the Registrar to arrange for the Appellant's application to be reassessed against the minimum standards for Site AOP 1 Licence, having regard to additional evidence provided.**

7.3 The Board's reasons are that:

- The Appellant has applied for a different AOP in his appeal.
- The Appellant has provided additional information not previously seen by the Registrar.
- The Board required further verification of the evidence.

**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 ..... day of October 2012.

---

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 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.”*