

**BPB Appeal No. A1100**

**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:	11 December 2012 at [omitted]
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Appeal heard by:	Alan Bickers Jane Cuming Dianne Johnson Richard Merrifield	Chairman (Presiding Member) Board Member Board Member Board Member
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Appearances by:	[omitted] [omitted] [omitted] [omitted]	(the Appellant) (Support) (Support/witness) (Witness)
	The Registrar, Mark Scully, was available by telephone but was not required to participate.	

## **1.0 Introduction**

- 1.1 The Appellant of [omitted] applied for Carpentry and Site Area of Practice (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 the Appellant’s application and notified 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 12 September 2012<sup>2</sup>, 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 he/she 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 meets 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>

## **3.0 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 Appellant seeks the following relief:

*To be licensed in Carpentry and Site AOP 1 class licences.*

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

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

<sup>2</sup> Received by Board Secretary on 12 September 2012.

<sup>3</sup> S 286 of the Act and rule 4 of the Rules.

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

<sup>5</sup> S 330(1)(a) of the Act.

<sup>6</sup> S 335(2) of the Act.

<sup>7</sup> S 335(4) of the Act.

### **Carpentry Licence Competencies**

- 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 1 Licence Competencies**

- 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 Assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 21, the following from the Assessor's recommendations:

" ...

- *The Appellant started working as a builder's labourer (for his father) in 2006. Between 2006 and 2008 the scope of work included residential extensions, alterations and renovations.*
- *From 2007 - 2010 the Appellant built his own 250 m<sup>2</sup> home, under partial supervision of his father.*
- *Since 2010 the Appellant has been a self employed builder (with no staff). The scope of work has included farm sheds, sleep outs, and house extensions.*
- *Referee [omitted] was unable to verify who actually carried out the work at project 1, but believed the Appellant built at least the second half of the project. [omitted] has since been involved with the Appellant on several smaller jobs and has no hesitation in recommending him for the Carpentry licence.*
- *Because [omitted] only visited project 1 half way through the build the Assessor asked for another referee. Referee [omitted] (a [omitted] Representative) confirmed that he visited project 1 many times. He confirmed that the Appellant carried out building work and ordered materials.*
- *Referee [omitted] designed project 2. [omitted] confirmed that the Appellant and his father carried out the work, but was unable to*

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<sup>8</sup> Clauses 10 and 11 of the Rules.

*confirm who the lead on site was or who managed the subcontractors or materials.*

- *The Appellant was asked to provide another project, as project 1 was completed on a part time basis. The Appellant was not able to provide another project; project 1 was the only house and only large project he had completed.*
- *The Appellant has no formal qualifications, a short work history, limited career progression, and has carried out a limited scope of work. He lacked understanding of trade practice and terminology, and lacked understanding of the LBP Scheme.*
- *The Appellant did not demonstrate sufficient 'repeatability' or 'scope of ongoing work'."*

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

4.3 The Registrar concluded:

*"22. I reviewed the assessors report and the Appellant's application.*

*23. 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 had submitted written submissions for consideration by the Board which referred to the Competencies which the Registrar decided that he failed to meet. He discussed his work experience in relation to these. He included photographs of the construction of his own house, as well as construction drawings.

5.2 The Appellant answered questions from the Board in relation to his work experience since returning to New Zealand in 2005 and commencing work for his father, [omitted], a joinery contractor. He described the scope and scale of the building projects, his personal involvement and various technical aspects.

5.3 The Appellant was supported with comments from his wife and father, [omitted], who had been his supervisor for some of the work described. [omitted], who was a LBP Carpentry, gave evidence about his association with the Appellant on the projects referred to.

## 6.0 Board's consideration

### *Carpentry Licence*

- 6.1 The burden of proof in an appeal lies with the Appellant<sup>9</sup>. In respect of any licence class, the Appellant must demonstrate to the Board's satisfaction that he meets all the required competencies for a class of licence.<sup>10</sup>

The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Carpentry licence:

### **Carpentry Licence**

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

- 6.2 Overall, the Board noted from the Appellant's application and submissions that he did not have any relevant qualifications, had not completed an apprenticeship and had limited experience in the industry both in terms of duration and scope of building work.
- 6.3 The Board then considered Competencies 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.
- 6.4 The Appellant demonstrated that he met one of the performance indicators for Competency 2, but overall he did not demonstrate sufficient knowledge and experience for the balance of the indicators. In particular, his lack of knowledge of the requirements of E2/AS1 was a matter of concern to the Board.

In respect of Competency 3, the Board concluded that the Appellant did not demonstrate sufficient knowledge and experience to satisfy the performance indicators.

In respect of Competency 4, the Appellant demonstrated that he met some performance indicators, but the Board concluded that his experience was insufficient to meet the requirements of the Competency.

- 6.5 The Board considered that the Appellant failed to provide adequate evidence to demonstrate that he met sufficient of the performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Carpentry licence. Consequently, the appeal in respect of the Carpentry Licence was not upheld.

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<sup>9</sup> Clause 3.10.23 of Building Practitioners Board "Appeal Procedures".

<sup>10</sup> Clause 4(1) of the Rules.

### *Site AOP 1 Licence*

- 6.6 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Site AOP 1 licence:

#### **Site AOP 1 Licence**

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

- 6.7 The Board then considered Competencies 2, 3, 4 and 5 for Site AOP 1 licence. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

- 6.8 In respect of Competency 2, the Board decided that the Appellant did not demonstrate adequate technical knowledge of construction to satisfy the requirements of this competency.

In respect of Competency 3, the Board decided that the Appellant did not demonstrate that he met the requirements of any of the performance indicators. His lack of knowledge and experience of health and safety requirements in the construction sector and lack of any safety management procedures was a matter of concern to the Board.

In respect of Competency 4, the Appellant's limited experience was insufficient to demonstrate that he met the requirements of this Competency.

In respect of Competency 5, the Appellant demonstrated to a limited degree one of the performance indicators, but overall the very limited range of his work experience was not sufficient to satisfy the Board that he met the requirements of this competency.

- 6.9 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 2, 3, 4 and 5 for a Site AOP 1 licence.

### *Board's findings*

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

- 6.11 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Site AOP 1 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 1 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 15<sup>th</sup> day of January 2013.

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Alan Bickers  
Chairman  
(Presiding 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.”*