

BPB Appeal No. A1104

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:	4 February 2013 at [omitted]
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Appeal heard by:	Bill Smith	Board Member (Presiding)
	Dianne Johnson	Board Member
	Richard Merrifield	Board Member
	Brian Nightingale	Board Member

Appearances by:	The Appellant
	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 a Foundations, Site AOP 1 and Carpentry licence under s 288(2) 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 Site AOP 1 and Carpentry application(s) and notified his decision by letter dated 20 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 19 September 2012,² the Appellant lodged an appeal to the Board against the Registrar’s decision for his Carpentry licence application.

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.³ 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 1.⁴
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁵

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁶ however the Board will not review matters outside the scope of the appeal⁷.
- 3.2 The appeal seeks the following relief:

To be licensed in Carpentry.

In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3 and 4 for a Carpentry licence.

Carpentry Licence competencies

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 19 September.

³ S286 of the Act and rule 4 of the Rules.

⁴ Clause 4(2) of the Rules

⁵ S330(1)(a) of the Act.

⁶ S335(2) of the Act

⁷ 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.

4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁸. 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 1990 to 1994 (initially in School holidays) the Appellant started working as a hammer hand for his father undertaking general site duties.*
- *In 1994 the Appellant was employed to work full-time for [omitted] as a trainee and progressing through to a leading hand, carrying out a range of foundation and in-situ concrete work.*
- *In 1996 and 1997 [omitted] attended carpentry block courses at [omitted].*
- *From 1999 until 2003 the Appellant was employed by [omitted] as a Site Foreman, so gained 9 years experience in heavy commercial site formwork and concrete construction.*
- *From 2003 to 2004 the Appellant was employed as a carpenter in [omitted], undertaking formwork, steel reinforcing, suspended slabs, columns and beams and concrete placement.*
- *From 2005 to the present day the Appellant has worked as a self-employed concrete contractor setting up [omitted] in [omitted]. He undertakes all aspects of residential and commercial concrete construction and foundation work.*
- *Project 2, completed in 2006, was a commercial steel and concrete structure with minimal carpentry scope of work. Other contractors undertook the critical aspects of the build.*
- *The Appellant's referees could not confirm his repeatability in carrying out carpentry work. The referee for Project 2 was unable to confirm that the Appellant carried out the structure, framework, cladding installation, or window installation, as this work was all carried out by individual contractors.*
- *The Appellant was unable to provide other projects for which carried out carpentry work on the complete build within the last 5 years.*

⁸ clause 10 and 11 of the Rules

- *The project that the Appellant provided for his Site application was a heavy commercial project, which would have placed it in the Site area of practice 3 category. The Appellant did not undertake the site management of the project, as this was provided by the referee, [omitted].*
- *The Appellant could not demonstrate repeatability of performance in carpentry and was unable to meet Competencies 2, 3, and 4 for the Carpentry licence.*
- *The Appellant is a foundation and concrete structures specialist, which is how his referees recognise him.”*

The basis for the Registrar’s decision to decline the application

4.3 The Registrar concluded:

- “23. *I reviewed the assessor’s report and the Appellant’s combined application.*
24. *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 advised:

- a. That in hindsight, because had applied for 3 licenses at the same time, he may not have supplied enough information about his carpentry experience and scope of practice to specifically address the carpentry license application.
- b. He had been a carpenter since the age of nineteen.
- c. He has been self employed since 2004 specialising in foundations, floors and concrete wall systems for high end architectural housing.

5.2 The Appellant supplied with his appeal:

- a. Information on four residential projects where he had undertaken carpentry from the slab right through to the completed dwelling and one commercial project which was a four level flight of access stairs including the foundations, installation of prefabricated components and handrails.
- b. He explained to the Board the formwork system he had imported from [omitted] and how he had used it on a particular project to pour 300mm thick concrete walls with an internal insulation. He described in detail how he adapted the concrete pumping system to fill both sides of the insulation with concrete into the special; formwork. This

is being used in high end residential housing alternative paragraph for consideration.

- c. He described to the Board how he had imported a [omitted] formwork system and used this to form and pour insulated concrete walls. Further, he explained how he had adapted the method of pouring the concrete to enable concrete to be poured simultaneously to both sides of the insulation in a 300 mm thick wall, 5.0 metres in height.

5.4 The Appellant explained to the Board how he had been carrying out carpentry work on various projects since 2002 including renovations, new dwellings and a technical staircase at the [omitted].

5.5 The Appellant explained to the Board about his current work and the skills required to use the specialized formwork system for constructing insitu concrete walls.

6.0 Board's consideration

6.1 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.

6.2 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.

6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

Board findings

6.4 The Presiding Member clarified with the Appellant that the licence he was applying for was Carpentry.

6.5 The Board noted that the Appellant had since 2004 being involved mainly in specialist concrete and formwork. The Board considers that this work requires many of the skills required by the performance indicators for the competencies of a carpentry license. The Board considers, that neither this, nor his inability to show recent repeatability of performance should automatically rule him no longer competent. It is up to the Appellant to demonstrate current competency.

6.6 The Appellant in answering questions from the Board, satisfied the Board that he met sufficient of the performance indicators required to meet competencies 2, 3 and 4.

6.7 The Board considered that the Appellant provided sufficient evidence to

demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Carpentry licence.

7.0 Board's Decision

7.1 Pursuant to s335(3) of the Act the Board has resolved to reverse the Registrar's decision and license the Appellant with a Carpentry Licence.

7.2 The Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.

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 day of 2013.

Bill Smith
(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.”*