

BPB Appeal No. A1031

IN THE MATTER OF

The Building Act 2004

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

1. Introduction

- 1.1 The Appellant applied for Carpentry and Site Area of Practice (AOP) 2 Licenses under s.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined the Appellant's applications under Rule 12 and the Appellant was notified of the Registrar's decision on 30 September 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").
- 1.3 On 26 October 2011, the Appellant appealed to the Board² against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board upholds the Appellant's application and grants the Appellant Licensed Building Practitioner status in Carpentry and Site AOP 2.
- 1.4 The Board decided to hear the appeal on 28 November 2011. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.5 The Procedure provides that appeals are considered by way of a "re-hearing"³, and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure).
- 1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

Alan Bickers	Board Chairman (Presiding)
Jane Cuming	Board Member
Dianne Johnson	Board Member

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by the Board on 28 October 2011.

³ Refer s.335(2) of the Act.

Brian Nightingale Board Member
William Smith Board Member

Pam Lwee Acting Board Secretary

Appellant and supporting witnesses:

The Appellant with support from his wife.

Registrar and support:

Mark Scully

1.8 The Board received the Registrar's report of 4 November 2011.

2. Background

2.1 The Appellant submitted his application to the Registrar to be licensed in Carpentry and Site Area of Practice (AOP) 2 using the "qualified" application form.

2.2 On 5 August 2011 the Registrar wrote to the Appellant advising him that his applications for both licenses were complete and had now proceeded to assessment.

2.3 Assessment Systems Limited (ASL) reviewed the applications.

2.4 The Carpentry assessment was completed on 12 August 2011 and the Assessor advised the Registrar that the Appellant's application for Carpentry met the minimum standard and should be granted.

2.5 The Site assessment was completed on 12 August 2011. The Assessor found that the Appellant had provided insufficient evidence that he met the requirements for Site AOP 2 and recommended the Appellant be granted a Site AOP 1 licence.

2.6 After taking into account the recommendations of the Assessor and the requirements of section 286 of the Act, reviewing the reports and speaking to one of the Appellant's referee's, the Registrar decided to decline both the Carpentry and Site AOP 2 licence applications (under Rule 12).

3. The Registrar's Report & Submissions

3.1 In order to become licensed, the Appellant was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under S.286 of the Act). These minimum standards are set out in Schedule 1 and 2 to the Rules, in the form of "competencies" which must all be satisfied.

For Carpentry these competencies are:

- Competency 1: *Demonstrate knowledge of the regulatory environment of the building construction industry.*
- Competency 2: *Demonstrate knowledge of current building and trade practice.*
- Competency 3: *Carry out planning and scheduling of carpentry work.*
- Competency 4: *Carry out carpentry work.*

For Site AOP 2 these competencies are:

- 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.*

In order to be licensed an applicant must demonstrate that he/she meets all the required competencies of the License Class.

3.2 These competencies may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).

3.3 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.

3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).

Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.

3.5 In making the recommendation that the Appellant's application for a Carpentry licence be granted the Assessor noted:

- The Appellant holds recognized qualifications.
- The Appellant referees confirmed the Appellant's roles in the nominated projects and that they were recent. The referees were supportive of the application and the Appellant's technical skills.
- The Assessor's contact with the Appellant confirmed his regulatory knowledge.

3.6 In making the recommendation that the Appellant's application for a Site AOP 2 licence should be declined and that a Site AOP 1 licence be granted the Assessor noted:

- The Appellant had recently come back into the construction side of the industry after owning and running a timber processing company.
- The Appellant showed good technical ability and skill and had an excellent knowledge of code and regulatory requirements.
- The Appellant's only substantial project to date was the project he was currently constructing.
- The above project was reasonably complex, however there was not enough evidence to confirm repeatability of such projects.

3.7 In making the decision to overturn the Assessor's recommendations the Registrar noted:

- The LBP scheme has an underpinning principle of current competence.
- That the weighting given to a referee's evidence will vary depending on their technical status, relationship to the applicant and knowledge of the applicants work.
- The Appellant had not provided any evidence that he had taken active steps to keep up-to-date with the sector and did not belong to an industry organisation.
- The Appellant had worked on only one project after what is inferred as a long absence from the industry.
- That he considered there was insufficient evidence that the Appellant met the requirements for:
 - Carpentry licence
 - Competency 2. Demonstrate knowledge of current building and trade practice.
 - Competency 4. Carry out carpentry work
 - Site Licenses.
 - Competency 3. Organise and manage building projects.
 - Competency 4. Manage personnel.

4. The Appellant's Submissions

4.1 The Appellant's written submission to the Board referred to his relevant industry qualifications, his continued activity in the industry and that had he realised the importance of the referees he would have held off submitting his application until his first choice referee was available to talk to the assessor.

4.2 The Appellant provided photos of two projects he has been involved with being, his "In laws" house and a house in xxx area and explained the extent of his involvement in these.

4.3 The Appellant tabled a reference from Referee 1 (Chartered Professional Engineer) and explained that Referee 1 had intended to attend the appeal hearing in person until the requirement to give evidence in a Coroner's hearing in another location took precedence.

4.4 The Appellant also tabled a copy of NZQA qualifications achieved in the last five years.

- 4.5 The Appellant made written and oral submissions addressing the competencies for both the Carpentry and Site AOP 2 licence which the Registrar had considered he had not met the minimum requirements and explained why in his opinion he considered that he did meet these competencies. He responded to questions from Board Members.
- 4.6 The Appellant said that one of his referees is a builder by trade even though he is currently a salesman for a building merchant and that the Registrar had not considered his evidence in this light.

5. Board's Consideration

- 5.1 The Board has noted that the Registrar was satisfied that the met two of the competencies for the Carpentry Licence:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry
- Competency 3: Carry out planning and scheduling of carpentry work

The Board concurred with this finding based on the Appellant's submissions and responses to Members' questions.

- 5.2 The Board then considered the remaining competencies and found that despite the Appellant having recently reentered the construction side of the industry, with respect to:

- Competency 2. He has demonstrated his knowledge of current practices or that, if he was in doubt, he knows how to seek out the required information.
- Competency 4. He has demonstrated his ability to carry out carpentry work.

- 5.3 The Board considers that the Appellant meets the competency requirements of the Rules for the Carpentry Licence.

- 5.4 The Board noted that the Registrar considered that the Appellant met three of the competencies for the Site AOP 2:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.
- Competency 2: Apply technical knowledge of construction methods and practice.
- Competency 5. Provide technical supervision.

- 5.5 The Board then considered the remaining competencies for Site AOP 2 and considered that with respect to:

- Competency 3: Organise and manage building projects.
 - The Appellant had not demonstrated that he was able to implement a site safety plan on category 1, 2 and/or 3 buildings.

- The Appellant had not demonstrated that he had not been responsible for establishing a building site and managing its ongoing operations on sufficient category 2 and/or 3 buildings. The Board did not consider that he had demonstrated that he met sufficient of the performance indicators for this Competency.
- Competency 4: Manage personnel.
 - The Appellant had not demonstrated that he was able to supervise personnel at the worksite on sufficient category 2 and/or 3 buildings.

The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Site AOP2 licence but that he had demonstrated that he met the requirements for a Site AOP 1 licence.

6. Board's Decision

6.1 Pursuant to S.335(3) of the Act, the Board has resolved to reverse the Registrar's decision not to issue the Appellant with a Carpentry Licence.

6.2 Pursuant to Clause 3.9.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Carpentry Licence to the Appellant.

6.3 The Board's reasons are that the Appellant has demonstrated, to the Board's satisfaction, that he meets all of the competency requirements of the Carpentry Licence.

6.4 Pursuant to S.335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to issue the Appellant with a Site Area of Practice 2 Licence.

6.5 Pursuant to S.333(3) of the Act, the Board has determined that the Appellant meets the requirements of Site Area of Practice 1 Licence.

6.6 Pursuant to Clause 3.9.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Site Area of Practice 1 Licence to the Appellant.

6.5 The Board's reasons are that the Appellant has demonstrated, to the Board's satisfaction, that he meets sufficient of the competency requirements under the Licensed Building Practitioners' Rules for the Site Area of Practice 1 Licence. The Board considers that subject to obtaining additional experience working on category 2 and/or 3 buildings, the Appellant may be capable of meeting the competencies of Site AOP 2 at a future date.

7. Costs

- 7.1 Pursuant to S.338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.⁴
- 7.2 Submissions on costs were sought from the Appellant and the Registrar.
- 7.3 Neither the Appellant nor the Registrar sought costs.
- 7.4 The Board, having considered the circumstances of this appeal and the submissions, directs that costs shall lie where they fall.

8. Publication of Name

- 8.1 Pursuant to S.339 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 this matter.
- 8.3 The Appellant indicated that he would prefer that his name was not published.
- 8.4 The Board, having considered the circumstances of this appeal, directs that the name and the particulars of the Appellant not be published.

Signed and dated this 19th day of December 2011



Alan Bickers
Chairman
(Presiding Member)

⁴ The "parties" are the Appellant and the Registrar. The Board is not a party.

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

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; or*
 - (b) *suspend or cancel his or her licensing.*

- (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); or*

...

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.*