

**BPB Appeal No. A1139**

**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:	20 May 2013 at [omitted]
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Appeal heard by:	David Clark Bill Smith Brian Nightingale Jane Cuming	Deputy Chair (Presiding) Board Member Board Member Board Member
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Appearances by:	The Appellant  The Registrar, Mark Scully, 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, Site Area of Practice (AOP) 1 and Bricklaying and Blocklaying Licence under s287 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 16 November 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 8 January 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.<sup>2</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>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup> however the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:  
  
The grant of a Carpentry and Bricklaying and Blocklaying Licence.
- 3.3 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 and Competencies 2 and 4 for a Bricklaying and Blocklaying Licence.

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

<sup>2</sup> S286 of the Act and rule 4 of the Rules.

<sup>3</sup> Clause 4(2) of the Rules

<sup>4</sup> S330(1)(a) of the Act.

<sup>5</sup> S335(2) of the Act

<sup>6</sup> S335(4) of the Act

**Carpentry Licence Competencies:**

*Competency 2: Demonstrate knowledge of current building and trade practices.*

*Competency 3: Carry out planning and scheduling for carpentry work.*

*Competency 4: Carry out carpentry work.*

**Bricklaying and Blocklaying Competencies:**

*Competency 2: Demonstrate knowledge of Bricklaying and Blocklaying trade practice.*

*Competency 4: Carry out masonry work.*

**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>7</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 The Registrar's report notes, at paragraph 25 and 26, the following from the Assessor's recommendations:

“... ”

*Bricklaying and Block Laying*

- *From 1993 to 2004 [the Appellant] carried out building maintenance work.*
- *2004 to 2005 [the Appellant] was a builder working for [omitted].*
- *From 2005 to 2006 [the Appellant] was involved with [omitted].*
- *2006 to present [the Appellant] is an installer of light weight concrete installations.*
- *[The Appellant] has worked with light weight concrete for the past six years. He was unable to provide the necessary projects to meet the Areas of Practice he applied for.*
- *[The Appellant] does not meet the necessary guidelines and required competencies.*

*Carpentry*

- *From 1984 to 1990 [the Appellant] was a [omitted] in [omitted].*
- *1982 to 1983 [the Appellant] was a [omitted] in [omitted] in exterior and interior plastering.*
- *1984 to 1990 [the Appellant] became a professional interior decorator in [omitted].*
- *1990 to 1993 [the Appellant] was a student at the [omitted].*
- *1993 to 2004 [the Appellant] became the [omitted] for the [omitted].*

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<sup>7</sup> clause 10 and 11 of the Rules

- *From 2004 to present [the Appellant] has become self employed as a Project Manager and subcontracts out to [omitted] in [omitted]. He has completed a [omitted] Installer course.*
- *[The Appellant] has some knowledge of the building industry.*
- *[The Appellant] mainly constructs masonry and Hebel houses. He has the Carpenters carry out the main building work, such as the foundations, framing, roofs and other building work.*
- *[The Appellant] helps with the masonry construction and supervises his crew and sub-contractors as well as supervising the site.*
- *[The Appellant] knowledge and practical experience in the building industry does not cover the required competencies.”*

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

#### 4.3 The Registrar concluded:

- “27. I reviewed the assessor’s report and [the Appellant’s] combined application.*
- 28. I based my decision on the assessor’s recommendations, for the reasons set out above.*
- 29. I did not agree with the assessor’s recommendation that [the Appellant] did not demonstrate Competency 3: Carry out planning for masonry work for Bricklaying and Block Laying: Veneer and Structural Masonry AOP. I considered that he planning and scheduling work [the Appellant] does is a ‘transferable skill’.*
- 30. The Competencies reflect the broad base of skills and knowledge a competent practitioner is expected to have. The Competencies reference recognised standards as a means of providing a benchmark for what is expected of a practitioner. It appears that [the Appellant] almost exclusively uses Autoclaved Aerated Concrete (AAC) products and systems. These are not ‘traditional’ in New Zealand, and are considered to be ‘alternative solutions’. This means that they are not covered by a recognised ‘compliance pathway’ such as a ‘Compliance Document’ issued by the Ministry for Business, Innovation, and Employment, or a Standard issued by Standards New Zealand.*
- 31. During the application process, the assessors asked [the Appellant] to provide evidence of how he met the Competencies as described in the LBP Rules, which he was not able to do. Ministry staff reviewed the applications and offered [the Appellant] the opportunity to provide additional information before the Registrar made a decision about his applications. [The Appellant’s] response did not satisfactorily address the gaps identified in the assessment process.*
- 32. On the evidence available, and without a recognised benchmark to measure performance against, I was not prepared to licence [the Appellant]. My decision to decline his applications should not be considered a reflection on the work that [the Appellant] does; it is more*

*the case that his work does not currently come within the 'scope' of the licensed building practitioner Scheme."*

## **5.0 Appellant's Submissions**

- 5.1 The Appellant provided the Board with a written submission dated 11 March 2013 as well as a number of emails exchanged between himself and the [omitted] as well as [omitted] who is a [omitted] for [omitted] with the [omitted].
- 5.2 In addition to his written statement the Appellant made some further oral submissions which can be summarized as follows:
- (a) The Appellant confirmed that he builds exclusively with the Autoclaved Aerated Concrete ("AAC") products and systems;
  - (b) He has been building solid masonry homes with the AAC products and systems for the last ten years; by being granted licences in the categories that he seeks, this would provide him with a "quality mark" which would assist in the work that he undertakes;
  - (c) That he believes that he will encounter difficulties with Building Consent Authorities being reluctant to grant consents or accept a memorandum from him (as required by the Building Act 2004) if he does not hold the licences he is seeking;
  - (d) That he confirmed that he does not do traditional carpentry work or bricklaying and blocklaying work and accepts that as the competencies and the performance indicators are currently stated he does not meet the competencies in either category which were declined by the Registrar;
  - (e) That notwithstanding the above, if there is a "gap" in the licensing system then the inclusion of the structural components of the AAC system should be included within the bricklaying and blocklaying competencies or he should be given a "limited licence" (limiting him to the type of work that he undertakes with the AAC system) to allow him to continue with the work that he performs.

## 6.0 Board's consideration

### *Carpentry Licence*

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Carpentry Licence:

#### **Carpentry Licence Competencies:**

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

- 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.
- 6.4 On the Appellant's own evidence, the Board accepts that the Appellant is unable 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.

### *Board's findings*

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

### *Bricklaying and Blocklaying Licence*

- 6.6 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Bricklaying and Blocklaying Licence:

#### **Bricklaying and Blocklaying Licence Competencies:**

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

*Competency 3: Carry out planning for masonry work.*

- 6.7 The Board then considered Competencies 2 and 4 for a Bricklaying and Blocklaying 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 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.9 The Appellant's evidence was that he does not undertake traditional bricklaying and/or blocklaying work.
- 6.10 The Board considers that the Competencies of this license as written are specific to concrete blockwork and/or brickwork and that if it is the intention of the Licensing Scheme that other structural masonry or Veneer work be

Restricted Building Work then the Competencies need to be amended accordingly.

## **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 or a Bricklaying and Blocklaying Licence. The appeal is therefore declined.**

7.2 The Board however notes and agrees with the Registrar's comments that the decision to decline the Appellant with a Licence should not be considered a reflection on the work that the Appellant undertakes but rather is more the case that the Appellant's work does not currently fit within the "scope" of the Licensed Building Practitioners Scheme.

## **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 invites submissions from the Appellant on prohibition of publication of the Appellant's name, not later than 10 working days from the date of this decision.

Signed and dated this 26 day of June 2013.

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David Clark  
Deputy Chair  
(Presiding)

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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.”*