

BPB Appeal No. A1163

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:	29 July 2013 at [omitted]
-------------------------------	---------------------------

Appeal heard by:	Richard Merrifield Brian Nightingale Dianne Johnson	Presiding Member Board Member Board Member
------------------	---	--

Appearances by:	The Appellant The Registrar's delegate, Sharn Christensen, 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 Licence under s287 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 application and notified his decision by letter dated 19 December 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 15 February 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.² 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 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁵ however the Board will not review matters outside the scope of the appeal⁶.
- 3.2 The appeal seeks the following relief:

The grant of a Carpentry and Site Area of Practice 1 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 and 4 for a Carpentry Licence and Competencies 2, 3, 4 and 5 for a Site AOP 1 Licence.

Carpentry Licence Competencies:

Competency 2: Demonstrate knowledge of current building and trade practice.

Competency 4: Carry out carpentry work.

¹ Incorporating amendments for 2008, 2009 and 2010.

² S286 of the Act and rule 4 of the Rules.

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

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 recommendation⁷. 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 23, the following from the Assessor's recommendations:

"...

- *[The Appellant] is a family career Carpenter/ builder with a structural engineering background. Since leaving school [the Appellant] gained his Carpentry skills, technical knowledge and site management abilities working in the family business.*
- *For sixteen years [the Appellant] has worked for [omitted] as a Contracts Manager, predominantly working on passive fire protection and new or re-cladding works on both residential and commercial projects. Some major projects have included [omitted] involving 4500m² of exterior and interior cladding and linings, and [omitted] involving 2500m² exterior re-cladding.*
- *Prior to this [the Appellant] has been working on lift installations for five years.*
- *[The Appellant's] work history includes building his home (which is outside the five year timeframe) and carrying out a leaky home re-cladding project in 2010 (which involved removal of existing cladding, interior linings, timber framing and exterior joinery, re-instatement of same to building code and structural compliance).*
- *[The Appellant] currently manages and co-ordinates the supply of materials and supervises thirty sub-contractors on Carpentry and re-cladding projects. [The Appellant] provides technical overview/ supervision at specific hold points of construction.*
- *[The Appellant's] referees were supportive of his application.*
- *The assessor requested more information regarding [the Appellant's] projects, which he was able to provide.*
- *[The Appellant] maintains a proactive involvement in keeping up to date with current building product knowledge, BCA requirements and building code amendments.*

⁷ clause 10 and 11 of the Rules

- *[The Appellant] actively engages with site personal on a regular daily basis to ensure any issues are handled efficiently.*

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

4.3 The Registrar concluded:

"24. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.

25. I reviewed the assessors report and [the Appellant's] application.

26. I did not agree with the assessor's recommendation that [the Appellant] demonstrated the following Competencies for Carpentry:

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

27. [The Appellant] has been a contracts manager for the last 16 years and working on lift installations for 5 years prior to that. These roles are not covered by the LBP scheme.

28. One of the projects presented was work carried out on by [the Appellant] on his own house. Working on your own house is quite different to working for a client with in standard industry constraints i.e. completing the project on time and within budget.

29. [The Appellant] has not provided sufficient recent evidence to demonstrate repeatability of performance to fulfill the scope of the Carpentry licence class."

5.0 Appellant's Submissions

5.1 The Appellant spoke of his experience in the industry describing his role as a contract manager with a specialist cladding company and gave examples of projects he had been involved with.

5.2 The Appellant described his role where is assisted his [omitted], a carpenter, in a recent extension to his home carried out in 2010.

5.3 In response to questions by the Board the Appellant provided more detail of his experience in relation to the competencies for the Carpentry and Site AOP 1 Licenses.

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.

Competency 3: Carry out planning and scheduling for Carpentry work.

- 6.2 The Board then considered Competencies 2 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 The Board acknowledges that the Appellant has extensive experience and knowledge in a specialist area of exterior cladding. His work is mainly in commercial construction with limited residential recladding work. His only recent experience beyond this was work on his own house where he assisted a full time carpenter on the site.
- 6.5 The Appellant was unable to provide the Board with evidence of experience in a diverse range of carpentry work.
- 6.6 The Board considered that the Appellant failed to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2 and 4 for a Carpentry Licence.

Board's findings

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

Site AOP 1 Licence

- 6.8 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Site AOP 1 Licence:

Site AOP 1 Licence Competency:

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

- 6.9 The Board then considered Competencies 2, 3, 4 and 5 for a 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.
- 6.10 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.11 The Appellant used the same projects for both licence applications. The Board acknowledges that the Appellant has extensive experience and knowledge in a specialist area of exterior cladding. His work is mainly commercial construction with some residential recladding work. The only recent experience beyond this was work on his own house.

- 6.12 The Appellant was unable to provide the Board with sufficient evidence of supervisory experience in a diverse range of construction activities.
- 6.13 The Board considered that the Appellant failed 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

- 6.14 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 AOP 1. 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 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 5 day of August 2013

Richard Merrifield
(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.”*