

BPB Appeal No. A1206

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:	17 March 2014 at [omitted]
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Appeal heard by:	Dianne Johnson, Presiding Member Brian Nightingale, Board Member Catherine Taylor, Board Member Richard Merrifield, Board Member
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Appearances by:	[The Appellant]
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry Licence and a 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 29 January 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board ("the Board").
- 1.3 On 14 November 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 Licence and a Site AOP 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, 3 and 4 for the grant of a Carpentry licence and Competencies 2, 3, 4, and 5 for the grant of a Site (AOP) 1 licence.

Carpentry Licence Competencies:

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

¹Incorporating amendments for 2008, 2009 and 2010.

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

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(4) of the Act

- 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 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 20 of the April 2013 report, the following from the Assessor's recommendations:

Summary of the assessor's recommendation

"In making the recommendation that [the Appellant's] application for Carpentry and Site AOP 1 should be declined, the assessor noted the following:

- In the late 1980's [the Appellant] worked alongside a Carpenter in [omitted] and then in [omitted].
- Prior to 2000 [the Appellant] completed some building work in [omitted].
- From July 2002 to January 2003 [the Appellant] carried out maintenance of a [omitted] store.
- February 2003 to August 2007 [the Appellant] was a self employed building maintenance person specialising in commercial and industrial jobs.
- August 2007 to January 2008 [the Appellant] was a glazing co-ordinator.
- In 2008 [the Appellant] was a Site Manager/ Supervisor on a bridge and road construction project.
- September 2008 to present [the Appellant] is a Hotel Maintenance Manager.

Carpentry

- Both projects [the Appellant] provided were outside the five year time frame and the work history was limited in scope.
- There was insufficient evidence to show [the Appellant] had carried out a good scope of Carpentry work in a recent and consistent context.
- There was insufficient evidence to show [the Appellant] had carried out a good scope of planning or scheduling work in a recent and consistent context.

⁷ Clause 10 and 11 of the Rules

- The assessor requested additional projects however [the Appellant] was unable to do so.
- The assessor requested an additional referee who could confirm working with [the Appellant]. He was able to provide one.

Site

- The project [the Appellant] provided was outside the five year time frame and the work history was limited in scope.
- There was no evidence of any work and personal organised or managed in a recent and consistent context.
- There was insufficient evidence around recent, consistent, onsite application of technical knowledge.”

4.3 Following the Appeal being lodged and new information being received, the Board referred the matter back to the Registrar for comment.

4.4 The Registrars November 2013 report notes at paragraphs 22-31:

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

- “On 31 May 2013 the Board referred [the Appellant's] appeal back to the Registrar to reconsider his decision based on additional information submitted by [the Appellant].
- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] applications.
- I reviewed the original assessment report and the additional information provided by [the Appellant].
- I reviewed the assessment report under S312 (1) and the additional information submitted by [the Appellant] which I have outlined below:

[Omitted] – bathroom upgrade 2011

[Omitted] – room upgrade 2012

[Omitted] – new chillers installation 2011

[Omitted] – smoke alarm system upgrade 2012-2013

[Omitted] – heat exchange unit installation 2013

- None of the work carried out by [the Appellant] on the above listed upgrades and maintenance jobs had been restricted building work and no building consent was obtained. This was confirmed by the technical referees provided whom I contacted by phone.
- Further to the upgrade and maintenance work, [the Appellant] submitted plans and specifications of an additional job he worked on as a carpenter – [omitted]. As per my request [the Appellant] provided two technical referees for this job – [omitted], Designer and [omitted], Structural engineer.
- I contacted both of the referees to confirm [the Appellant's] role and scope of his role on this job.

- [Omitted] indicated that she was the designer for this project which involved the construction of a new garage as well as new deck and retaining wall to the existing house. [Omitted] confirmed that [the Appellant] was the builder on site and his workmanship was of good standard. [Omitted] indicated that the applicant's technical knowledge also appeared sound.
- [Omitted] was not able to locate any files containing technical information in regards to the [omitted] project provided by the applicant. [Omitted] could not recall working on this job and could not discuss any details about the applicant's work on it or what the scope of the project was.
- [The Appellant's] scope of work on the above job includes construction of a new garage as well as new deck and retaining wall to the existing house.
- The scope of work carried out by [the Appellant] at [omitted] and the various upgrades and maintenance jobs provided are not sufficient to demonstrate the range and repeatability of work required for the Carpentry and Site 1 licence classes.
- I based my decision on the assessor's recommendation and the additional information submitted by [the Appellant]. I did not consider that the additional information provided by [the Appellant] as part of his appeal was sufficient for me to grant his Carpentry and Site 1 licences."

5.0 Appellant's Submissions

- 5.1 The Appellant included, with his appeal, information about an addition and alteration project that he began in 2011 and further information about the work he did as maintenance manager of a commercial property.
- 5.2 At the hearing, the Appellant tabled a partial set of the building consent documents for the 2011 project.
- 5.3 The Board asked questions of the Appellant in relation to the competencies for both the Site AOP 1 and Carpentry licences. Through these questions, the Appellant indicated that he had been working within the construction industry for approximately thirty years carrying out residential work.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following Competencies for Carpentry and Site AOP 1 licences:

Carpentry Licence Competencies:

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

Site AOP 1 Licence Competency:

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.
- 6.3 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 LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.5 The board then considered Competencies 2, 3, 4, and 5 for a Site AOP 1 Licence.
- 6.6 These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 6.7 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

Board's findings

- 6.8 Given the new evidence regarding the 2011 project presented at the hearing, the Board concluded that the Appellant met sufficient performance indicators to satisfy the requirements of Competencies 2, 3, and 4 for a Carpentry Licence and Competencies 2, 3, 4, and 5 for a Site AOP 1 Licence.
- 6.9 The Board notes the provisions of S.314B of the Act which state:
- "A licensed building practitioner must-*
- a) Not misrepresent his or her competence;*
 - b) Carry out or supervise building work only within his or her competence."*
- 6.10 The Board notes that whilst the Appellant currently limits his scope of work to maintenance work the Board considers that in the specific circumstances of this appeal and on the basis of the evidence presented the granting of Carpentry and Site AOP1 licences is appropriate.

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 licence [the Appellant] with a Carpentry Licence and a Site AOP 1 Licence.**
- 7.2 The Board directs the Registrar to issue a Carpentry Licence and a Site AOP 1 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

Dianne Johnson
(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.”*