

BPB Appeal No. A1079

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:	13 November 2012 at [omitted]
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Appeal heard by:	David Clark Brian Nightingale Jane Cuming Richard Merrifield	Deputy Chairman Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted], witnesses for the Appellant, were available by telephone but were not required to participate. 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 Carpentry and Site Area of Practice (AOP) 1 Licence under s288(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 Carpentry and Site AOP 1 application and notified his decision by letter dated 26 June 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 24 July 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 2 November 2012 the Deputy Chairman of the Board informed the parties of the procedural matters for the appeal.

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 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 1⁴.
- 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 receive a Carpentry and 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 a Carpentry licence and Competencies 2, 3, 4 and 5 for Site AOP 1 Licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Complete Appeal received by Board Secretary on 24 July 2012.

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

Carpentry Licence

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.

Site Licence

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 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 In making the recommendation to decline the Carpentry and Site AOP 1 licence, the assessor noted the following:

- The Appellant has been in the building industry for 24 years. He answered all of the regulatory questions correctly and he has a good knowledge of NZS3604.
- However in the last seven years he has owned and been running a [omitted].
- The Appellant's referees had good comments about the Appellant and would recommend the Appellant based on the projects they had worked with him on and past building history. But they but (sic) could only confirm the Appellant working on two projects in the last seven years.
- The referee for Project One stated that the Appellant employed two builders to do the work on this project and the Appellant had undertaken the management role, although the referee did observe the Appellant carrying out some carpentry work on this project.
- An additional project was requested due to the fact that Project One was seven years old, however the Appellant had no other project to submit within the five year time frame and has not built any other projects apart from Project Two in the last seven years.
- The Appellant has not been able to show repeatability of performance and current competence."

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

⁸ clause 10 and 11 of the Rules

- 4.3 The Registrar reviewed the assessor's report and the Appellant's combined application. The Registrar noted that the application lacked detail and that the Appellant has no recognised qualification. The Appellant recorded that he was or has been a [omitted], but his name was not found in a search of the [omitted].
- 4.4 The Registrar based his decision on the assessor's recommendation and his review of the Appellants application and assessment report. The Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

5.0 Appellant's Submissions

- 5.1 The Appellant submitted that he believed he was declined his licenses due to his perceived lack of actual building over the last five years.
- 5.2 The Appellant submitted that:
- a. he has been a builder for 28 years.
 - b. he has been self employed since 1992, at times employing up to 6 carpenters.
 - c. the warehouse project in [omitted], submitted as part of his work record of work in his original application, was miss interpreted by the Assessor and was in fact 6 separate warehouses, albeit with some common walls, built over a nine month period in 2009.
 - d. his [omitted] business spent:
 - i. 50% of its time manufacturing architectural aluminium doors and
 - ii. 50% of its time manufacturing and installing proprietary office partitioning.
 - e. he is currently building in his spare time a 3 bedroom house in [omitted] for his "in laws".
- 5.3 The Appellant explained to the Board how he worked fulltime on the [omitted] warehouses from concept design through to completion and carried out or supervised all of the works. He hired 2 carpenters on a casual basis to assist him.
- 5.4 The Appellant explained to the Board that his involvement in his current project included carrying out the concept design, obtaining the PIM and Resource Consent and instructing the Architect to produce working drawings. He is now carrying out the building work.
- 5.5 The Appellant submitted evidence to verify that he was a member of [omitted] from July 2000 until he resigned in November 2005.

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 and Site AOP 1 licence:

Carpentry Licence:

Competency 1: Demonstrate knowledge of the regulatory environment.

Site Licence:

Competency 1: Demonstrate knowledge of the regulatory environment.

- 6.2 The Board then considered Competencies 2, 3 and 4 for a Carpentry licence and Competencies 2, 3, 4 and 5 for 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.
- 6.3 The LBP scheme is competency based, and it is up to the practitioner to demonstrate his competency.
- 6.4 The Board notes that the Appellant has been running a [omitted] business for the past 7 years and 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.
- 6.5 In particular the Board notes the nature of the Appellants [omitted] business is such that the Appellant has continued to perform carpentry and supervision work described by the performance indicators required for the competencies under consideration. In addition the Appellant demonstrated that he met sufficient of the performance indicators whilst building the warehouses in [omitted] and on the house in [omitted].

Board's findings

- 6.6 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 and Competencies 2, 3, 4 and 5 for Site AOP 1 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.**
- 7.3 **Pursuant to s335(3) of the Act the Board has resolved to reverse the Registrar's decision and license the Appellant with a Site Area of Practice 1 Licence.**

7.4 The Board directs the Registrar to issue a Site Area of Practice 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 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 20 day of December 2012.

David Clark
Deputy Chairman
(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.”*