

BPB Appeal No. A1080

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:	23 October 2012 at [omitted]
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Appeal heard by:	Bill Smith Colin Orchiston Brian Nightingale Dianne Johnson Jane Cuming	Presiding Member Board Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (support for the Appellant) [omitted] (witness for the Appellant) [omitted] (witness for the Appellant)
	The Registrar, Mark Scully, was available by teleconference but not required.

1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Carpentry and Design Area of Practice (AOP) 2 Licences under s 288(2) of the Act and the Licensed Building Practitioners Rules 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined Carpentry and Design AOP 2 applications and notified his decision by letter dated 18 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 18 July 2012², the Appellant lodged an appeal to the Board against the Registrar’s decision
- 1.4 At a pre-hearing teleconference on 9 October 2012 the Presiding Member 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 Schedule1⁴.
- 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:
Granting of Carpentry and Design AOP 2 Licences

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 18 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

- 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 3 for a Design AOP 2 licence.

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.

Design Area of Practice 2 Licence

Competency 2: Manage the building and design process.

Competency 3: Establish design briefs and scope of work and prepare preliminary design.

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 assessors' recommendation.
- 4.2 The Appellant's application was assessed by two assessors: one for the Carpentry licence and a second for the Design licence.
- 4.3 In making the recommendation to decline the Carpentry licence application, the Registrar noted the following reasons recorded by the Assessor:
- The Appellant began his career as an architectural draughtsperson, gaining his NZ Certificate in Architectural Draughting in 1980;
 - The Appellant began to learn physical skills in 1980. From 1987 to the present he has designed and built new homes, additions, and farm buildings;
 - Both of the Appellant's referee's provide supportive comments regarding his relevant skills;
 - Both projects the Appellant supplied were out of the recommended 5 year time frame. The Appellant was given the opportunity to supply further information about more recent projects but declined the opportunity;
 - One referee confirmed work carried out with the Appellant within 5 years. The Appellant would not provide the details of this project when the assessor requested further information; and

⁸ Clause 10 and 11 of the rules

- The Appellant has not shown in his application the repeatability of performance over the last 5 years.

4.4 In making the recommendation to decline the Design AOP 2 licence application, the Registrar noted the following reasons recorded by the Assessor:

- The Appellant has experience in the industry as a designer and builder dating back to the 1980's. He holds a NZ Certificate in Draughting (Architectural). The Appellant is not a member of any industry organisation but keeps reasonably up to date with ongoing learning activities;
- Due to the downturn in the construction industry the Appellant had found it difficult to provide projects that were relevant and current;
- The projects the Appellant submitted were either dated or not yet consented. Evidence was missing in a number of key areas as noted in the face to face. Neither project was a category 2 building relevant to Design area of practice 2, nor was the Appellant able to offer alternative projects showing relevance and repeatability in this AOP. Therefore Design AOP 2 was unable to be offered;
- The projects submitted were relevant to Cat1 AOP1 but that there was insufficient evidence across a number of competencies as highlighted in the face to face;
- The evidence provided was essentially limited to the drawings and specifications, which were at a reasonable level relative to the project complexity;
- The Appellant does not get involved with contracts or contract administration but was able to describe an understanding of these. He showed understanding of the LBP scheme and acknowledged working within his limitations and area of practice;
- No formal engagements were entered into, communication with parties was not available, and the Appellant has not retained adequate job files. Referee endorsement was not available from (sic) two referees; and
- The assessor believed that insufficient evidence was made available to the assessor to justify an offer of Design AOP 1.

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

4.5 The Registrar reviewed the assessors' reports and the Appellant's applications.

4.6 The Registrar based his decision on the assessors' recommendations and his review of all of the Appellant's licence applications and assessment reports.

4.7 In regards to the Appellant's Carpentry application, the Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

4.8 In regards to the Appellant's Design AOP 2 application, the Registrar did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

- 4.9. However, the Registrar did not accept the Design assessor's recommendation that Competency 2 - Manage the building design process – was demonstrated, as there was no evidence provided to support this. The Registrar also noted: "The aim of the LBP scheme is to increase the performance and productivity of the building sector. Poor record keeping and lack of clarity about project scope and role is a contributing factor in the sector's current poor performance."

5.0 Appellant's Submissions

- 5.1 The Appellant's submission included supporting evidence and he tabled additional evidence at the hearing. The evidence included a list of projects from the Local Authorities data bases, and verification of the projects that he has been involved with.
- 5.2 The Appellant advised that at the time of his assessments he had found it difficult to think of two recent projects suitable to cover the full range of competencies such that they could be offered up as examples of his work. He submitted that this was because the economic downturn of the last 5 years had meant that he was working on mainly smaller projects.
- 5.3 The appellant submitted that he now realised that even though these projects may have been small they still possessed elements requiring the same range of skills of the larger projects.
- 5.4 The Appellant advised that the majority of his work was design build and that he rarely if ever designed work that others built, nor built work designed by others.
- 5.5 Whilst the Appellant submitted a number of projects as evidence of his work, much of the discussion was around a [omitted] which involved specific and skilled design and construction, that the appellant both designed and built, a category 1 Bach in [omitted], a garage and implement shed and a 2-storey addition to a house in [omitted] which was category 1.
- 5.6 The Appellant's witnesses were both involved in the [omitted] project and attested to his attention to detail, and his efforts to ensure the project was built to a high standard of workmanship.
- 5.7 The Appellant advised the Board that he had underestimated the original assessment process and taken it too lightly. He now realised the extent of the information required and had in this appeal submission put emphasis on providing additional information the assessor had identified was missing in the original application and face to face interview.
- 5.8 The Appellant acknowledged his limitations particularly around commercial construction and advised that he would readily seek assistance and advice if he ever took on such work. The Appellant's answers to Board questions demonstrated he had some understanding of contract administration.
- 5.9 The Appellant submitted that he spent approximately 80% of his time on carpentry work and 20 % of his time on design work.

6.0 Board's consideration

Carpentry Licence

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met Competency 1 for the Carpentry licence.
- 6.2 The Board then considered Competencies 2, 3 and 4. 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 is satisfied that the evidence submitted by the Appellant and his response to the Board's questions showed that he met sufficient of the performance indicators to demonstrate competency in Competencies 2, 3 and 4 for a Carpentry License.

Design AOP 2 Licence

- 6.5 The Board noted that the Registrar was satisfied that the Appellant met Competency 1 and 4 for the Design AOP 2 licence.
- 6.6 The Board then considered Competencies 2, and 3. 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 his competency.
- 6.8 The Appeal is in the nature of a rehearing. The Board reviews the reports prepared by the Assessor and Registrar but the Board is not provided with the evidence viewed by the Assessor.
- 6.9 The Board examined the additional documentation provided by the Appellant. The Board considers that the new evidence requires a more detailed assessment against the Competencies for Design AOP 1 and / or 2.
- 6.10 The Board considers this is an appropriate case for reconsideration by the Registrar having the benefit of a complete reassessment of the Appellant's application against the requirements of the Design Licence.

7.0 Board's findings

- 7.1 The Board has concluded that the Appellant met the competency requirements for a Carpentry licence.
- 7.2 The Board considered the volume and nature of the evidence submitted for design licence appeal was such that it should be referred back to the Registrar.

8.0 Board's Decision

8.1 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.

8.2 The Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.

8.3 Pursuant to s335(3) and s337(1) of the Act and Clause 3.11.4 of the Board's Appeals Procedure, the Board has resolved to direct the Registrar to arrange for the Appellant's application to be reassessed against the minimum standards for Design Licence AOP 1 and/or 2, having regard to additional evidence provided.

8.4 The Board's reasons are that:

- The Appellant has provided additional information not previously seen by the Registrar.
- The Board considers that this information needs to be considered along with the evidence submitted previously to the Registrar and / or the assessor.

9.0 Publication of Name

9.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.

9.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.

9.3 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 thisday of..... 2012.

Bill Smith (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.”*