

BPB Appeal No. A1081

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:	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 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 21 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 2012 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 (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 and 4 for a Carpentry Licence and Competencies 2, 3 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 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 the following from the Assessor's recommendations:

"...

- *[The Appellant's] regulatory knowledge is at an acceptable level and he has as an adequate work history and career progression.*
- *[The Appellant's] Referees were supportive. [The Appellant's] referee for project 1 was a family member. This was unavoidable as the only other potential referee was overseas and not able to be located. [The Appellant's] supplementary referees were also very supportive but were again in one case a client (although a suitable technical referee) and a pre-nail detailer.*
- *The projects submitted, and [the Appellant's] role on them, were consistent with licence class criteria. However, the projects were outside the recommended timeframe, and [the] Appellant did not provide suitable recent projects.*
- *[The Appellant's] recent work relates to smaller renovations, some of which require building consent but much of his work does not. For each of the renovations of properties [the Appellant] has managed the projects from pricing and supervision of other trades etc. [The Appellant] submitted a lot of photos of work done in the last 5 years in his work in renovation of properties.*

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

4.3 The Registrar concluded:

"21. I reviewed the assessor's report and [the Appellant's] application.

22. I based my decision on my review of [the Appellant's] application and assessment reports. I considered whether to accept the assessor's recommendation to offer a face to face assessment for both licenses. I concluded that the assessor had already made a substantial effort to obtain relevant information about [the Appellant's] work, and that a face

⁷ clause 10 and 11 of the Rules

to face assessment was therefore unlikely to produce relevant new evidence.

23. *In making my decision I did not agree with the assessor that [the Appellant] had demonstrated that he met the following Competencies:*

For Carpentry

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

For Site (Area of Practice 1)

- *Competency 2: Apply technical knowledge of construction methods and practice; and*
- *Competency 3: Organise and manage building projects.*
- *Competency 5: Provide technical supervision.”*

5.0 Appellant’s Submissions

- 5.1 The Appellant had been responsible for the design and build of his own properties as well as undertaking building work on contract to clients. In order to do this he had worked with professionals within the industry to ensure the buildings were finished to a high standard. In recent years because of the downturn, his work had been concentrated on work which does not require consent such as refurbishment of bathrooms and kitchens, and building new decks and retaining walls. Since lodging his LBP application he had undertaken work on consented building sites with qualified LBPs/structural engineers. He provided photographic evidence with written commentary for houses built in 1996, 2006 and alterations undertaken in 2010 and 2013.
- 5.2 His building experience had been gained while working for the [omitted]. His work on building sites and as an operational manager for the [omitted] had given him experience and knowledge of fire safety within buildings, fixed fire protection and safety and integrity of buildings construction as a result of fire, which should be taken into account by the Board.
- 5.3 He had completed [omitted] qualifications which he submitted also related to building construction and he had taken a project management paper from [omitted], a [omitted] and had read NZS 3604 and BRANZ publications. He submitted that this was evidence of his knowledge of current building and trade practices and showed he kept up to date with changes in building construction.
- 5.4 He had acted as a representative of the [omitted] on the design and build of two fire stations and a training college. In order to carry out this role he had worked with professionals to ensure the projects were finished on time to budget and to standard.
- 5.5 He provided references from:
 [omitted] – [omitted]
 [omitted] – [omitted]
 [omitted] – [omitted]
 [omitted] – [omitted]
 [omitted] – [omitted]

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 accepts that the Appellant has had considerable experience in the [omitted]. Whilst acknowledging that some of his skills are transferable to the building industry, and considering his work history, the Appellant had failed to demonstrate that he has sufficient experience within the building industry to meet the threshold criteria of the competencies for him to be granted his Carpentry Licence.
- 6.5 In responding to the Board's questions the Appellant failed to provide evidence 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

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

Site AOP 1 Licence

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

Site AOP 1 Licence Competencies:

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

Competency 4: Manage personnel.

- 6.8 The Board then considered Competencies 2, 3 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.
- 6.9 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

- 6.10 The Board accepts that the Appellant has had considerable experience in the [omitted]. Whilst acknowledging that some of his skills are transferable to the building industry, the Appellant has failed to demonstrate that he has sufficient experience within the building industry to meet the threshold criteria of the competencies for him to be granted his Site AOP 1 Licence.
- 6.11 The Board considered that the Appellant failed to provide evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 5 for a Site AOP 1 Licence.

Board's findings

- 6.12 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 Area of Practice 1 Licence. 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 24 day of June 2013

David Clark
Deputy Chair
(Presiding)

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.”*