

BPB Appeal No. A1130

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:	27 May 2013 at [omitted]
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Appeal heard by:	Jane Cuming Bill Smith Richard Merrifield Colin Orchiston	Presiding Member 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) 3 Licence under s287 of the Building Act 2004 (“the Act”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 7 November 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 4 December 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.¹ 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 1².
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.³

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁴ however the Board will not review matters outside the scope of the appeal⁵.
- 3.2 The appeal seeks the following relief:

The grant of a Carpentry and Site Area of Practice (AOP) 3 Licence.

- 3.3 In light of s355 and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competency 4 for the grant of a Carpentry licence and Competencies 2, 3, 4 and 5 for the grant of a Site AOP 3 licence.

Carpentry Licence Competency:

Competency 4: Carry out carpentry work.

¹ S286 of the Act and rule 4 of the Rules.

² Clause 4(2) of the Rules

³ S330(1)(a) of the Act.

⁴ S335(2) of the Act

⁵ S335(4) of the Act

Site AOP 3 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 recommendation⁶. 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 22, the following from the Assessor's recommendations:

"...

- *[The Appellant] completed a [omitted] in 1987.*
- *[The Appellant] has progressed within the building sector with roles including site manager and project manager.*
- *Since 2006 [The Appellant] has filled a quantity survey role on a number of large scale buildings for a [omitted] in [omitted].*

Carpentry

- *Both referee's [the Appellant] provided were unable to confirm his role in carrying out Carpentry work within the last five years.*
- *[The Appellant] was unable to provide two suitable technical referees who could confirm his role in either carrying out or in a direct supervision role during the last five years.*
- *[The Appellant] was unable to demonstrate Competency 4: carry out carpentry work for a Carpentry licence.*

Site

- *The projects [the Appellant] provided were Category 2 buildings. His role on these projects included quantity surveying and project management.*
- *Project 2 was outside the 5 year time frame.*
- *[The Appellant] was unable to provide two new Category 3 projects that were completed within the last five years.*
- *Both of [the Appellant's] referees were supportive of his application and confirmed his role as a quantity surveyor and project manager on the projects provided.*
- *[The Appellant] provided acceptable answers to his project records questionnaire with all the answers underpinning his skills and knowledge of Category 2 type buildings.*

⁶ clause 10 and 11 of the Rules

- *[The Appellant] provided acceptable answers to the regulatory knowledge questions.”*

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

4.3 The Registrar concluded:

“23. I reviewed the assessors report and [the Appellant’s] application.

24. I based my decision on the assessor’s recommendation, for the reasons set out above. I did not agree with the assessor’s recommendation that [the Appellant] demonstrated Competency 2: Apply technical knowledge of construction methods and practice for the Site licence.”

5.0 Appellant’s Submissions

5.1 In respect of his Carpentry license, the appellant was awarded a top apprentice award for [omitted] in the final year of his apprenticeship, holds trade certificate and worked for a number of years as a trade qualified carpenter. His referees’ affirmed he attained a high level of skill. The appellant submitted that his ability to carry out carpentry work has not been impaired by his successful career within the construction industry. He is a trained and qualified Carpenter who has kept abreast of change and considers his progression to quantity surveyor and current role as a commercial manager to be an extension of his carpentry skills. He has carried out carpentry work on his own home in recent years.

5.2 In respect of his area of practice 3 Site license, the appellant submitted that the two projects he submitted in his original application were both Category 3 buildings. The appellant queried the assessor’s request that he provide evidence he was in a site-based direct supervision role. The appellant discussed delegation and working within the limits of his competency.

5.3 He provided further information about projects submitted in his original application. Project 1 involved the structural alteration and strengthening and fit-out of a three storey, 5000m² building. His role was quantity surveyor managing the financial aspects of the job. Project 2 involved the construction of a complex 3 level, 6500m² [omitted]. He chose this project as he had been involved from inception and was in complete control of the construction phase in his capacity as Project Manager. He provided evidence and answered questions in relation to his role on recent projects.

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 2: Demonstrate knowledge of current building and trade practice.

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

6.2 The Board then considered Competency 4 for a Carpentry Licence. This competency 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.

Board's findings

6.4 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 Competency 4 for the grant of a Carpentry Licence.

Site AOP 3 Licence

6.5 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Site AOP 3 Licence:

Site AOP 3 Licence Competency:

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

6.6 The Board then considered Competencies 2, 3, 4 and 5 for a Site AOP 3 Licence. 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.

6.8 The Board noted that the assessor may have confused Site area of practice 3 with Category 3. The complexity of building submitted by the appellant in this appeal and his role are relevant to the Site area of practice 3 license and it is not a condition of this license that the appellant be site-based. The Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3, 4 and 5 for the grant of a Site licence in area of practice 3.

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 3 Licence.

7.4 The Board directs the Registrar to issue a Site Area of Practice 3 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 28 day of June 2013

Jane Cuming
(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.”*