

**BPB Appeal No. A1135**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	26 March 2013 at [omitted]
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Appeal heard by:	Jane Cuming Bill Smith Brian Nightingale Dianne Johnson	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 a Carpentry and Site Area of Practice (AOP) 1 Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s Carpentry and Site AOP 1 applications and notified his decision by letter dated 16 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 12 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.<sup>2</sup> The minimum standards are set out as “competencies” in Schedule 1 to the Rules. In determining whether a person met a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1<sup>3</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>4</sup>

## **3.0 Scope of the appeal**

- 3.1 An appeal proceeds by way of rehearing<sup>5</sup> however the Board will not review matters outside the scope of the appeal<sup>6</sup>.
- 3.2 The appeal seeks the following relief:  
  
The grant of a Carpentry and Site Area of Practice 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 Competency 4 for a Carpentry Licence and Competencies 4 and 5 for a Site AOP 1 Licence.

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> S286 of the Act and rule 4 of the Rules.

<sup>3</sup> Clause 4(2) of the Rules.

<sup>4</sup> S330(1)(a) of the Act.

<sup>5</sup> S335(2) of the Act.

<sup>6</sup> S335(4) of the Act.

### **Carpentry Licence Competencies:**

*Competency 4: Carry out carpentry work.*

### **Site Licence - Area of Practice 1 Competencies:**

*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 recommendation<sup>7</sup>. 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 The Registrar's report notes, at paragraph 22, the following from the Assessor's recommendations:

" ...

- *From 1967 to 1978 [the Appellant] was a Carpenter in his father's company. He learned the trade by carrying out work with his father and brother.*
- *From 1978 to 2001 [the Appellant] was the builder and director of his family business, mostly carrying out labour only group housing work.*
- *2001 to 2006 [the Appellant] worked as a director and worker of a new company. He completed twelve new townhouses for clients.*
- *2006 to 2009 [the Appellant] spent time as a bar and café owner.*
- *2009 to present [the Appellant] is a director and worker for a company.*

#### *Carpentry*

- *[The Appellant's] role in Project 1 was consistent with all the components of the licence class criteria. Project 2, however, was limited in scope and the work carried out was done on a non-habitable building.*
- *[The Appellant] provided an additional project which covered all the criteria; however it was outside the recommended timeframe.*
- *[The Appellant] referees were supportive of his application.*

#### *Site*

- *[The Appellant's] referees were supportive of his application.*

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<sup>7</sup> clause 10 and 11 of the Rules.

- *[The Appellant] was unable provide any further projects suitable to demonstrate Competency 5: provide technical supervision for Site.*
- *[The Appellant] presented a good overall work history and career progression although his recent work history is limited due to having taken some time out of the trade.*
- *[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 assessor's assessment report and [the Appellant's] application.*

*24. I based my decision on the assessment report for the reasons set out above. I did not agree with the assessor's recommendation that [the Appellant] did demonstrate Competency 4: Manage personnel for Site."*

## **5.0 Appellant's Submissions**

5.1 He has been in building industry 40 years. He has broad carpentry experience having been trained to cut and pitch a roof and build his own wall framing and stairs which he considered many younger builders would struggle to do. He is the main contractor which means he plans and schedules the work to minimise disruption to the client and makes sure the subcontractors come in at the right time and can do their work unimpeded. He explained the addition and alteration work he specialises in is often more difficult to price, carry out and supervise than new build work. He prefers to work alone and has a team of skilled subcontractors he works with. He is proud of the high quality houses, additions and alterations he has successfully completed over the years. He urged the Board to consider his lifetime experience and the complexity of the limited number of jobs he had completed in recent years.

He drew the Boards attention to his referees' endorsement of his work.

He drew the Boards attention to the assessor's comments that "the combination of the 1<sup>st</sup> carpentry and site project along with the supplementary project and the applicants work history warrants consideration that the applicant is suitable to hold both the carpentry and site AOP licenses"

His work experience had been interrupted by a 3 year [omitted] between 2006-2009. The Appellant submitted that this had disadvantaged his application and he had not lost the ability to carry out carpentry work, supervise personnel or provide technical supervision as a result of this break.

5.2 He submitted a photo of house he built for himself in 1999-2000 at [omitted], and a letter from the current owner attesting to the quality of the building work.

- 5.3 The Appellant described individual projects on which he had carried out carpentry and site supervision work between 2000 and 2005.
- a. Typically he did one project a year.
  - b. They were complex additions and alterations.
  - c. The work typically included building a new addition to the house which offered interesting technical challenges in managing the integration of the new structure, roofing and cladding to existing. The work often included rearranging the layout of the existing house and relocation of kitchen and bathrooms.
  - d. The owners often chose to live in the house while he undertook the work which meant he had to pay particular attention to their security and manage the work to reduce the inconvenience to them while ensuring the work progressed to schedule.
- 5.4 In 2006 the Appellant carried out carpentry and site supervision work at [omitted]. This was submitted to the assessor as a supplementary project. The work was described by the assessor as a 20 sqm addition and renovation to a house. The Appellant's work included timber pile foundations, bearers, joists and T&G flooring to match existing, timber frames (clad with) weatherboards boxed corners and scribes, construction of roof structure with two valleys and 1 hip cut in to fit existing roof, new double garage with internal entrance, timber joinery including a large bi-fold door opening onto a large deck area, new kitchen and ensuite, and fitted walk-in wardrobe. The Appellant's role was carpenter and Site supervisor, managing subcontractors, arranging materials and council inspections.
- 5.5 In May 2010-May 2011 the Appellant carried out carpentry and site supervision work at [omitted]. This was submitted in his Carpentry application as Project 1 and Site application as Project 3. The work was staged and involved supporting the upper occupied house while building a garage under, removal of existing lower storey double brick walls and floor structure, then installation of new slab, framing, insulation and cladding. The Appellant's role was Carpenter and Site supervisor, managing subcontractors, arranging materials and Council inspections.
- 5.6 In May-July 2011, 2011 the Appellant carried out carpentry and site supervision work at [omitted]. This was submitted in his Carpentry application as Project 2. This was a new 32sqm garage with internal entry to the existing house. The Garage had concrete block walls, concrete floor and a pitched timber roof structure clad in long-run and a ceiling lined with plasterboard. The Appellant set out profiles and dug the footings by hand because of the difficult site access. He supervised subcontractors' work including scaffold erection, set out of block wall control joints, pumping of blockfill, slab pour and roofing. He undertook the carpentry work of cutting roof members, installing windows, internal door and ceiling linings.
- 5.7 The Appellant has carried out carpentry and supervision work on smaller non Restricted Building Work projects since September last year. The Appellant described that work in detail including building a large complex deck at [omitted].

## **6.0 Board's consideration**

- 6.1 The Board noted the appellant's building experience covering forty years excepting a three year [omitted] 2006 to 2009. The LBP scheme is competency based. In this case the Appellant drew upon his extensive experience when describing the work he had done and answering Board member's specific questions. By all accounts, his many years on the tools undertaking complex carpentry and supervision work has resulted in a level of trade skill or competency many younger builders might aspire to.

### **Carpentry Licence**

- 6.2 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.*

- 6.3 The Board then considered Competency 4. This competency 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 In answering questions from the Board about the carpentry work he had carried out the Appellant demonstrated that he met the performance indicators for Competency 4 of a Carpentry licence.

### **Site Licence - Area of Practice 1**

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

#### **Site Licence - Area of Practice 1 Competencies:**

- Competency 1: Demonstrate Knowledge of the regulatory environment of the building construction industry.*
- Competency 2: Apply technical knowledge of construction methods and practice.*
- Competency 3: Organise and manage building projects.*

- 6.7 The Board then considered Competencies 4 and 5. These competencies can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.

6.8 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.

6.9 In answering questions from the Board about the site work he had carried out the Appellant demonstrated that he met the performance indicators for Competency 4 and 5 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 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 ..... day of ..... 2013.

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Jane Cuming  
Presiding Member

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**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.”*