

**BPB Appeal No. A1147**

**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:	19 August 2013 at [omitted]
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Appeal heard by:	Dianne Johnson Brian Nightingale Colin Orchiston Richard Merrifield	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [Omitted] (Witness for the Appellant) [Omitted] (Witness for 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 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 27 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 25 January 2013 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>1</sup> 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 1<sup>2</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>3</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>4</sup> however the Board will not review matters outside the scope of the appeal<sup>5</sup>.
- 3.2 The appeal seeks the following relief:

*The grant of 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 Competency 4 for a Carpentry Licence and Competency 5 for a Site AOP 1 Licence.

### **Carpentry Licence Competency:**

*Competency 4: Carry out carpentry work.*

### **Site AOP 1 Licence Competency:**

*Competency 5: Provide technical supervision.*

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<sup>1</sup> S286 of the Act and rule 4 of the Rules.

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

<sup>3</sup> S330(1)(a) of the Act.

<sup>4</sup> S335(2) of the Act

<sup>5</sup> S335(4) of the Act

#### 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>6</sup>. 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 31, the following from the Assessor's recommendations:

“ ...

- *[The Appellant] has a 22 year association with the building industry which began in 1990 as a Contractor to [omitted] in [omitted]. His role was to install and repair domestic and industrial doors.*
- *Prior to 1990 [the Appellant] was working in the forestry industry. Between 1980 and 1990 he did three renovations to his own home he had bought and sold during that period.*
- *In 2000 [the Appellant] purchased [omitted] of which he became the Director and Manager. The scope of work the company undertook was the installation and repairs to domestic and industrial doors, designing and building of garage doors, and minor building work and re-roofing.*
- *[The Appellant] is currently still the Manager of [omitted] and in 2004 bought a [omitted].*
- *The client for Project 1 had glowing comments of [the Appellant] as a Project Manager.*
- *[The Appellant] undertakes the management, organisation and supervision of garage door installation. This includes the installation, construction of carports, garages, sleep outs and new single storey homes. [The Appellant] stated that he helps carry out the Carpentry work from foundations to completion when needed.*
- *[The Appellant's] day to day activities include dealing with the client, checking the site for viability, putting in a tender and construction package together, signing the contracts and then organising contractors and material deliveries.*
- *[The Appellant] has a good understanding of the regulatory environment and understands the consent process. He is directly involved in this aspect.*
- *[The Appellant] could not demonstrate current trade practice for which he stated that he had never built a project with a cavity system.*
- *[The Appellant] provided no evidence that suggests that he is permanently on site carrying out planning and scheduling of the day to day activities. It appears [the Appellant] has been doing this more from an off site role and visiting sites when sub-contractors are present.*

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<sup>6</sup> clause 10 and 11 of the Rules

- *[The Appellant] provided insufficient evidence to suggest he is either setting out, installing and making the building weather tight, framing the structural components, pitching roofs and insulation and bracing systems.*
  - *[The Appellant] may manage personnel in a contracts basis but not directly on site. The assessor believes that [the Appellant] has previously relied on contractors to carry out the technical supervision on site.*
  - *There was no evidence to support [the Appellant's] Carpentry experience in both supervision of Carpentry work or carrying out Carpentry work.*
32. *In making the recommendation that [the Appellant's] application for a Carpentry licence should be granted and the Site AOP 1 licence should be declined, in the Face to Face report the assessor noted the following:*
- *[The Appellant] was unable to supply a project under current construction in the required time frames and has supplied two of the most recent projects (completed) that he has undertaken the Carpentry work and site supervision of.*
  - *Due to the projects being completed, the assessor requested two technical referees to verify [the Appellant's] role.*
  - *The two technical referees confirmed that [the Appellant] had carried out the Carpentry work and has undertaken some supervision on the projects provided.*
  - *Both technical referees were supportive of [the Appellant's] application.*
  - *[The Appellant] has a good knowledge of the building stages including set out, foundations, structural wall and roof framing, exterior cladding, weathertightness and bracing systems.*
  - *[The Appellant] has a good understanding of product knowledge relevant to his type of work. It was his role to organise the materials for the projects provided and if he was unsure about any products, he would research the product through manufacturer's specifications or the internet.*
  - *[The Appellant] has a good understanding of NZS 3604, the consent process and the inspection process.*
  - *On both the projects provided the [omitted] had organised the consent, the subtrades and Code Compliance Certificate. [The Appellant] did not carry out a sufficient range of supervision, responsibilities and tasks on these projects."*

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

#### 4.3 The Registrar concluded:

- "33. I reviewed the assessor's reports and [the Appellant's] application.*
34. *I considered that the scope of [the Appellant's] work is limited and mainly based around garages. There is insufficient evidence that [the Appellant] is competent to carry out a range of critical Carpentry elements on a building project to the standard required.*

35. *For Site there was insufficient evidence to suggest that [the Appellant] carried out an adequate amount of technical supervision on site.*
36. *Therefore, I do not agree with the assessor's recommendation that [the Appellant] demonstrated the following Competency for Carpentry:*
- *Competency 4: Carry out Carpentry work.*
37. *I found that there was sufficient evidence [the Appellant] demonstrated Competencies 1, 2, 3 and 4 for Site.*
38. *I found that [the Appellant] did not demonstrate the following Competency for Site:*
- *Competency 5: Provide technical supervision."*

## **5.0 Appellant's Submissions**

- 5.1 The Appellant submitted information which had not been available to the Registrar. On the day of the hearing, for new project 1, he submitted drawings (Document A), building consent inspection and processing information (Document B); and for new project 2, drawings (Document C) and certified reference from the property owner (Document D). Document C was an original and was not left with the Board. The Appellant also showed the Board photographs on his computer of these two projects.
- 5.2 In answering questions from the Board the Appellant described two houses he had built for sale in the past five years. These were stand alone, single storey residences with fibre cement weatherboard or ply cladding. The Appellant also explained that he had installed timber and fibre cement weatherboards when altering existing properties during the installation of new garages.
- 5.3 The Appellant's witnesses attested to his experience and ability as a carpenter and site supervisor.

## **6.0 Board's consideration**

### *Carpentry*

- 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.
- 6.4 The Board considered that the Appellant was able to demonstrate that he undertook a wider range of residential construction than simple proprietary buildings.

*Board's findings*

- 6.5 The Board was satisfied that the Appellant demonstrated that he met sufficient of the performance indicators in Carpentry Competency 4.

*Site AOP 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 AOP 1 Licence 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.*
- Competency 4: Manage personnel.*

- 6.7 The Board then considered Competency 5 for a Site AOP 1 Licence. This competency 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 The Board noted that the Appellant's work involved the organisation and delivery of projects including the lodging of resource and building consent application, programming and coordination of sub-contractors through to obtaining the code compliance certificate.

*Board's findings*

- 6.10 The Board was satisfied that the Appellant demonstrated that he met sufficient of the performance indicators in Site AOP 1 Competency 5.

**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.**

**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<sup>th</sup> day of August 2013

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Dianne Johnson  
(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.”*