

**BPB Appeal No. A1154**

**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:	12 June 2013 at [omitted]
-------------------------------	---------------------------

Appeal heard by:	David Clark Bill Smith Dianne Johnson Richard Merrifield	Deputy Chair (Presiding) Board Member Board Member Board Member
------------------	---	--

Appearances by:	The Appellant [omitted] (witness for the Appellant) [omitted] (witness for the Appellant)  The Registrar's delegate, Sharn Christensen, was available by telephone but was not required to participate.
-----------------	---

## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for Carpentry and Site Area of Practice (AOP) 2 Licence under s287 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 application and notified his decision by letter dated 18 December 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 13 February 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>2</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>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 (AOP) 2 Licence or in the alternate AOP 1.
- 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, 3, 4 and 5 for a Site AOP 2 Licence.

### **Carpentry Licence Competencies:**

- Competency 2: Demonstrate knowledge of current building and trade practice.*
- Competency 3: Carry out planning and scheduling for carpentry work.*

---

<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

*Competency 4: Carry out carpentry work.*

#### **Site Area Practice 2 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 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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 24 the following from the Assessor's recommendations:

"...

- *[The Appellant] has been in the building industry for 27 years. He began his career by building speculative projects as a sole administrator, manager, designer and builder. The projects involved one and two storey residential projects with the old alteration job.*

- *Since 2006 [the Appellant] has started an inspection service along with carrying out small building projects as and when they are presented.*

##### *Carpentry*

- *[The Appellant] was requested to supply both a new Project 2 and a new referee as the original project that was submitted was out of date and the referee was not suitable.*

- *[The Appellant] re-supplied the second project with an additional five referees of which the assessor made contact with three of them. None of the referees had any association with the project [the Appellant] submitted.*

##### *Site*

- *[The Appellant's] 27 years within the construction industry are well documented and represented in his project records as are his site and managerial abilities. His project submissions however have insufficient evidence for a Site 2 assessment due to their lack of complexity and size.*

- *[The Appellant] was requested to supply both a new Project 2 and a new referee as the original project that was submitted was out of date and the referee was found not to be a builder but rather his casual hammerhand.*

- *[The Appellant's] referee's spoke positively of his Carpentry, Site management, and organisation skills.*

- *[The Appellant] was unable to show repeatability for the licence class applied for as none of the new referees that were provided were able to*

---

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

*give any evidence for the second project and none had actually been involved with it.”*

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

4.3 The Registrar concluded:

*“25. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant’s] application.*

*26. I reviewed the assessors report and [the Appellant’s] applications.*

*27. I based my decision on the assessor’s recommendation, for the reasons set out above.*

*28. I did not agree with the assessor’s recommendation that [the Appellant] demonstrated the following Competencies for Carpentry:*

- Competency 2: Demonstrate knowledge of current building and trade practice.*
- Competency 3: Carry out planning and scheduling for Carpentry work.*

*29. The evidence that [the Appellant] provided for his Carpentry application is minimal. Project 1 was a re clad project and Project 2 was not confirmed or verified by his referees.*

*30. I did not agree with the assessor’s recommendation that [the Appellant] demonstrated the following Competencies for Site:*

- Competency 2: Apply technical knowledge of construction methods and practice.*
- Competency 3: Organise and manage building projects.*
- Competency 4: Manage personnel.*

*31. The evidence that [the Appellant] provided for his Site application is minimal. Project 1 was a re clad project and for Project 2 [the Appellant] was unable to provide a credible referee.”*

## **5.0 Appellant’s Submissions**

5.1 The Appellant appeared before the Board with 2 witnesses, one of whom was a Licensed Building Practitioner who holds a Carpentry and a Site Area of Practice 1 Licence, while the other witness is also practicing as a Carpenter but does not currently hold a licence.

5.2 The Appellant referred the Board to his written submission, dated 5 April 2013, together with some further written and photographic evidence which he had recently submitted. The Appellant also made some further oral submissions that can be summarized as follows:

- a. The Appellant has been involved in the building industry for approximately 28 years, and has constructed numerous houses and/or undertaken alterations and repair work;

- b. In recent years (since 2005) the Appellant has done a mixture of house inspection work through a company that he has created (approximately 2000 inspections) together with some new homes, alteration and repair work;
- c. Two of the projects ([omitted] and [omitted]) were 2 new builds which were technically challenging (in terms of size, scope and complexity). The alteration and repair work involved a re-clad project, which he designed, supervised and was primarily responsible for the construction work; a minor alteration, where he assisted as a site manager;
- d. The final project he referred to was where the Appellant was engaged by the witness, [omitted], in a carpentry role to assist him in the construction of a very complex house in [omitted];
- e. The Appellant submitted that the first 2 projects referred to in paragraph c above should be taken into account by the Board notwithstanding when they were constructed (both been completed in 2005) even though the Registrar did not take them into account in declining the licence applications.

## 6.0 Board's consideration

### *Carpentry Licence*

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Carpentry Licence:

#### **Carpentry Licence Competency:**

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

- 6.2 The Board then considered Competencies 2, 3 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.

### *Board's findings*

- 6.4 The Board was satisfied that on the evidence provided by the Appellant together with his 2 supporting witnesses that he met sufficient performance indicators within each of the competencies to be granted his carpentry licence.
- 6.5 In particular the Board was satisfied that the projects that he has submitted clearly demonstrated that he has the requisite skills and experience to be granted this licence. In doing so the Board has taken into account the projects completed in 2005, which if viewed in isolation would not have been sufficient to demonstrate that the competencies had been met. However viewed together with the recent projects that he has submitted means that he has met the competencies.
- 6.6 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 Competencies 2, 3 and 4 for a Carpentry Licence.

*Site AOP 1 Licence*

- 6.7 The Board noted that the Registrar was satisfied that the Appellant met the following competency for the Site AOP 2 Licence:

**Site AOP 2 Licence Competency:**

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

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

*Board's findings*

- 6.11 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Site AOP 2 Licence.
- 6.12 However the Appellant also submitted that he should be granted the Site AOP 1 Licence.
- 6.13 The Board again considered the evidence as identified above and accepted that the Appellant was able to demonstrate that he had sufficient skills and experience based on the projects that he has undertaken to meet the competencies for Site AOP 1. In particular these are Competencies 3 and 4, which are different for a Site AOP 2 than they are for Site AOP 1.

**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 24<sup>th</sup> 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.”*