

BPB Appeal No. A1160

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] Heard on the papers at Appellant's request
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Appeal heard by:	Richard Merrifield Jane Cuming Colin Orchiston Bill Smith	Presiding Member Board Member Board Member Board Member
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1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Carpentry and Site Area of Practice (AOP) 2 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 18 January 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 14 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.² 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 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) 2 licence.
- 3.3 In light of 335(4) 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 and 5 for the grant of a Site AOP 2 licence.

Carpentry Licence Competency:

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 Area of Practice 2 Licence Competencies:

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

3.4 At the Appellant's request the Board heard the appeal on the papers.

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 assessor's recommendation.

4.2 The Registrar's report notes, at paragraph 22, in respect of the Appellant's application for a Carpentry and Site AOP 2 licence, the following from the Assessor's recommendations:

" ...

- *From 2003 to 2005 [the Appellant] was an apprentice for [omitted] in [omitted] carrying out work on commercial and residential projects.*
- *[The Appellant] obtained his National Certificate in Carpentry in 2008.*
- *From 2006 to 2009 [the Appellant] was a Foreman for [omitted] in [omitted] carrying out work on commercial and residential projects.*
- *In 2010 [the Appellant] was an estimator for [omitted] in [omitted].*
- *2011 to present [the Appellant] is a project co-ordinator for [omitted] in [omitted]. His role involves co-ordinating services and tenancy, project management, design review and consultant management for commercial shop fit-outs and new commercial buildings.*

Carpentry

- *The assessor requested a further project but as [the Appellant] was in [omitted] from 2010 for a year and did not work on any jobs in New Zealand until he came back in 2011 to work as a project co-ordinator he was unable to do so.*
- *[The Appellant] is not actively working on the tools as a Carpenter or directly supervising Carpenters carrying out Carpentry work, therefore he does not qualify for a Carpentry licence.*

Site

- *[The Appellant's] work history and career progression is consistent with his work history documentation. His Site role, when he was building, was relevant to his licence class, however he now works as a project co-ordinator".*

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

⁷ clause 10 and 11 of the Rules

4.3 The Registrar concluded:

- “23. *I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant’s] application.*
24. *I reviewed the assessors report and [the Appellant’s] applications.*
25. *I based my decision on the assessor’s recommendation, for the reasons set out above.*
26. *I did not agree with the assessor’s recommendation that [the Appellant] did not demonstrate Competency 3: Carry out planning and scheduling for Carpentry work.*
27. *In making the decision for the Carpentry application I considered Competency 2 and Competency 3.*
- *Competency 2; [the Appellant] completed his apprenticeship in September 2008. Before completing his apprenticeship he was working as a Foreman, and has continued in the industry until his current role as a project manager, therefore demonstrating competence.*
 - *Competency 3; with [the Appellant’s] information about his project supervision/management I have decided he is competent.*
28. *There is insufficient recent evidence to demonstrate repeatability of performance to fulfil the scope of the Carpentry licence class (in Competency 4) and therefore to confirm current competence.*
29. *In making the decision for the Site AOP 2 application it is clear that [the Appellant] does not fit the Site AOP 2 licence but I considered his work for [omitted] (where he served his apprenticeship) in relation to AOP 1.*
30. *I considered offering [the Appellant] an opportunity to supply additional information from this period.*
31. *Upon review of the application and the information provided by [the Appellant], he completed his qualification in September 2008 so therefore he was only dealing with the relevant work for approximately one year outside his apprenticeship before moving on with other opportunities. I do not consider this a sufficient amount of time to warrant following up for additional information as an additional two Site projects and referees will need to be submitted along with a re-assessment. In addition [the Appellant] is no longer in a Site role so there is no benefit offering a Face to Face assessment either.*

5.0 Appellant’s Submissions

- 5.1 The Appellant requested that the appeal be heard on the papers.
- 5.2 The Appellant documented that he obtained National Certificate in Carpentry in New Zealand and a Certificate in Building and Construction and a Diploma of Building and Construction from the [omitted], [omitted]. While he was undertaking his carpentry apprenticeship in NZ he acted as a foreman carpenter for his employer in residential and commercial construction.

- 5.3 The [omitted] Certificate in building dated 2010 covered a wide range of management activities that would be undertaken by a site manager on medium rise residential and commercial construction.
- 5.4 The [omitted] Diploma in construction management dated 2011 covered a wide range of management activities that would be undertaken by a project manager on medium rise residential and commercial construction.
- 5.5 He provided a list of projects that he is currently working on and submitted that the complexity of these demonstrated his abilities in project management.

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 a 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. 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 considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 4 for a Carpentry Licence.

Site AOP 2 Licence

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

Site AOP 2 Licence Competencies:

- Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- Competency 4: Manage personnel.*

- 6.6 The Board then considered Competencies 2, 3 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.
- 6.7 The LBP scheme is competency based, and it is up to the practitioner to demonstrate their competency.
- 6.8 The Board notes that both AOP 1 and AOP 2 based on on-site coordination and oversight but whilst the Appellant has been involved in this role as a carpenter, his subsequent qualification and current employment is as an off-site coordinator and project manager. The Board considered that at this point in time the Appellant lacks depth and experience in site management at AOP 2 level.
- 6.9 The Board recognises the considerable efforts that the Appellant has taken to improve his knowledge and skills following his carpentry apprenticeship, and that with further experience he would be in a position to apply for a higher site licence.
- 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 2, 3 and 5 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 The Board considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the 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 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 uphold the Registrar's decision not to license the Appellant with a Site Area of Practice 2 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.

8.3 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 2 day of July 2013.

Richard Merrifield
(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 license 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.”*