

BPB Appeal No. A1200

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:	17 February 2014 at [omitted]
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Appeal heard by:	Chris Preston, Deputy Chairman Catherine Taylor, Board Member Richard Merrifield, Board Member Mel Orange, Board Member
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Hearing held:	On the papers
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1.0 Introduction

- 1.1 [The Appellant] of [omitted] applied for a Carpentry 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 17 September 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 16 October 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 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 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 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 Competencies 3 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 3: Carry out planning and scheduling for carpentry work.*
- Competency 4: Carry out carpentry work*

¹Incorporating amendments for 2008, 2009 and 2010.

²S286 of the Act and rule 4 of the Rules.

³Clause 4(2) of the Rules

⁴S330(1)(a) of the Act.

⁵S335(2) of the Act

⁶S335(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 recommendation⁷. 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 20, the following from the Assessor's recommendations:

- "[The Appellant] has worked for the past 35 years in the construction industry in a variety of roles. Since 2003, these roles have been within Account Management and Business Development. From 2012 to the present [the Appellant] has worked as a Project Manager within the [omitted].
- [The Appellant] provided two Project Records to support his application, and on both these projects his role was that of Company Project Manager.
- Due to [the Appellant's] technical background and technical supervision role he was able to demonstrate knowledge of the regulatory environment of the building construction industry, and of current building and trade practice.
- The referee provided for Project 2 has witnessed [the Appellant] carry out carpentry work on a separate project, but this example fell outside of the recent 5 year period.
- Additional projects were requested and [the Appellant] said that he would struggle to provide works within the last 5 years to support criteria where he was directly involved in carrying out construction works.
- On each of his supplied projects, while both of his referees stated that he had not undertaken carpentry work directly on site, they were also sure to note the importance of [the Appellant's] technical knowledge and his role on site.
- Whilst [the Appellant] has an integral and important role to play prior to construction it must be noted that during the construction phase applicant is not in charge of the physical assembly/coordination of construction componentry and that his supervision is more administrative and he is initiated by the contract builder on site when it comes to schedules and materials."

4.3 The Registrar concluded:

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

- I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.
- I reviewed the assessor's report and [the Appellant's] application.
- I based my decision on the assessor's recommendation, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendation."

⁷ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant did not appear and the Board considered the evidence submitted by the Appellant in support of his appeal. This included two additional references from licensed persons attesting to carpentry work carried out by the Appellant.

6.0 Board's consideration

- 6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competency 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.

- 6.2 The Board then considered Competencies 3 and 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 how the Appellant's experience related to current building technology and compliance documents. For previous appeals, the Board has considered experience that may have fallen outside the five-year guidelines relied upon by the Registrar. The Board has also previously considered the experience an appellant has in related fields of work. The Board accepted that, in this appeal, the Appellant's earlier experience, coupled with his work experience in related areas outside the construction industry, were helpful in assessing his current competence.

Board's findings

- 6.5 The Board concluded that the Appellant provided evidence to demonstrate that he met sufficient performance indicators to satisfy the requirements of Competencies 3 and 4 for a Carpentry Licence.

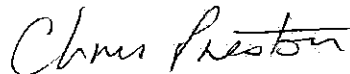
7.0 Board's Decision

- 7.1 **Pursuant to s335(3) of the Act, the Board has resolved to reverse the Registrar's decision and licence [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.**

8.0 Publication of Name

- 8.1 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 27 February 2014



Chris Preston
(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.”*