

BPB Appeal No. A1035

IN THE MATTER OF

The Building Act 2004

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

1. Introduction

- 1.1 On 12 October 2011, the Appellant applied for a Carpentry Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") appointed under S.310 of the Act, declined the application under Rule 12 and the Appellant was notified of the Registrar's decision on 8 December 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners Board ("the Board").
- 1.3 On 30 January 2012², the Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board grant a Carpentry Licence.
- 1.4 A pre-hearing teleconference was convened by the Chairman of the Board with the Appellant on 1 March 2012. The Board's Secretary of LBP Appeals and Complaints was in attendance
- 1.5 The Board decided to hear the appeal in Christchurch on 13 March 2012. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.6 The Procedure provides that appeals are considered by way of a "re-hearing"³, and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure).

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary by email on 30 January 2012.

³ Refer S.335(2) of the Act.

- 1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

Alan Bickers	Board Chairman (Presiding)
David Clark	Board Member
Jane Cuming	Board Member
Brian Nightingale	Board Member
Colin Orchiston	Board Member
William Smith	Board Member

Pam Lwee Board Secretary, LBP Appeals and Complaints

Appellant and supporting witnesses:

The Appellant

Witness 1 - Senior Project Manager
Witness 2 - Project Manager

Registrar

Mark Scully

Others in attendance:

Tony Guidera, DBH staff member

- 1.8 The Board received the Registrar's report of 31 January 2012.

2. Background

- 2.1 The Appellant applied for his Carpentry Licence using the "qualified" application form which does not require the applicant to list his work history.
- 2.2 The Appellant did his Carpentry apprenticeship in New Zealand and worked in both commercial and residential construction before moving to Australia where he has worked in construction for over 20 years.
- 2.3 The Appellant returned to New Zealand following the September 2010 Canterbury earthquake and is employed as a Project Manager for a firm working on earthquake repair and remediation of complex houses, commercial premises and heritage buildings in the Christchurch area.

3. The Registrar's Report & Submissions

- 3.1 In order to become licensed, the Appellant, was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under S.286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For carpentry, these competences are:

- *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*
- *Competency 4: Carry out carpentry work*

In order to be licensed an applicant must demonstrate that he/she meets all the required Competencies of the Licence Class.

- 3.2 These competencies may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor must use the "Assessor Guidelines" prescribed by the Registrar (see Rule 11(1)).
- 3.3 The competencies address a broad range of skills and knowledge that a competent practitioner should be able to demonstrate.
- 3.4 The Registrar must take into consideration the Assessor's recommendation before making a decision (under Rule 12(2)).
- 3.5 Reliance on the Assessor's recommendation does not mean that the Registrar cannot reach a different view about an applicant from the view reached by the Assessor. The Registrar is required to maintain an independent view. In the normal course of events, however, the Registrar will accept a recommendation of an Assessor, unless there are strong reasons for not doing so.
- 3.6 In making the recommendation to decline the application, the Assessor found that the Appellant did not meet the requirements of Competency 4 "*Carry out carpentry work*".
- 3.7 The Registrar concurred with the Assessor's recommendation to decline the application for reasons which he summarised as follows:
- a) The Appellant's role is that of a Project Manager. He does not work on the tools as a Carpenter and does not supervise carpenters in close proximity.
 - b) The Appellant has layers of other staff to supervise carpenters
 - c) Referee 1 advised that the Appellant has a good depth of trade, industry and technical knowledge and is well organized on site, with his men, subcontractors and material supply.
 - d) Referee 2 advised that the Appellant managed and collated the geotechnical input for his clients. He brought in teams of builders, foremen, leading hands and carpenters to carry out the work on several concurrent projects.

4. The Appellant's Submissions

- 4.1 The Appellant made written and oral submissions and provided further evidence including photographs. The main points of his submissions were:
- a) In his role as Project manager he draws on his trade background and extensive history of work. He closely monitors the construction managers and supervisors reporting to him and for some critical tasks provides direct first hand supervision of carpentry work which at times involves demonstration of exactly how that work is to be carried out.
 - b) He worked "on the tools" in New Zealand within the last fifteen months to assist a family member by carrying out carpentry work on a home renovation and construction of a large garage.
 - c) He worked "on the tools" in Australia as recently as 2008, carrying out some of the carpentry work on his own new house. He submitted photographs of houses he had worked together with a Queensland housing industry award that he had received.
 - e) He has an extensive history of construction work in New Zealand and Australia. He did not consider his progression from Carpenter to Leading Hand to Construction Supervisor to Project manager has lessened his ability as a Carpenter and because of his trade background all of his work has included aspects of carrying out or supervising the carrying out of carpentry work.
- 4.2 The Appellant submitted that he had provided "the wrong referees" in his original application. His referees were a New Zealand engineer and architect who could attest to his depth of knowledge and ability as a Project Manager but had no direct knowledge of him carrying out or supervising the carrying out of carpentry work.
- 4.3 The Appellant called 2 witnesses who both report to him in his current role as Project Manager.
- a) Witness 1 holds an LBP Carpentry Licence. He is currently overseeing a significant building remediation of a listed heritage building. The witness described a number of instances where the Appellant had developed a construction solution to a site problem in the office, obtained approval from the design engineer, and then shown carpenters on site exactly how to do the work to get the result that he wanted.
 - b) Witness 2 also holds an LBP Carpentry Licence. He is currently overseeing a complex residential remediation. He attested to the Appellant's focus on identifying critical tasks, making sure Carpentry and other trade work was properly supervised and carried out to a high standard. He spoke highly of the Appellants ability to give practical advice on how carpentry work was to be carried out and had seen the Appellant demonstrate how he wanted carpentry work carried out, to assist him and tradesmen working on site.

5. Board's Considerations

- 5.1 The Board questioned the Appellant about his work history in New Zealand and Australia and in particular concentrated on the extent he had carried out Carpentry work and how recently.
- 5.2 The Board questioned the Appellant and witnesses about the nature of his current Project Manager's role and sought to understand the extent he could demonstrate that he met the performance indicators for Competency 4 of the Carpentry Licence Class in the course of his work.

6. Board's Determinations

- 6.1 The Board is satisfied the Appellant has carried out carpentry work in the recent past and the extent of this work is sufficient to demonstrate his current competency in carrying out carpentry work to meet the requirements for Competency 4 for the Carpentry Licence Class.
- 6.2 In particular the Board finds that;
- a) The Appellant qualified as a carpenter and has an extensive work history in residential and commercial construction in a progression of roles from carpenter to Project Manager. Most of these roles involved aspects of "carrying out" or supervising Carpentry work.
 - b) The Appellant has carried out recent carpentry work in his private capacity.
 - c) The Appellant does from time to time "carry out" and supervise carpentry work in his role as Project Manager.
- 6.3 The Board was concerned that in answering questions put to him by the Board Members that the Appellant did not demonstrate the depth of knowledge of the regulatory environment of the building construction industry that it would expect of a LBP. As the Assessor and Registrar had accepted the Appellant's current competency on this matter the Board is not required to make a decision on whether the Appellant could demonstrate that he met the requirements for Competency 1 of the Carpentry Licence Class.
- 6.4 The Appellant conceded under questioning that the recent construction of a large garage which he cited as an example of his current competency as a carpenter was carried out without a building consent. The Board considers that the Appellant should be familiar himself with the requirements of the Building Act 2004 including the need to obtain a building consent unless the work is covered by Schedule 1 (Work which does not require consent). The Board notes that the Appellant's actions fell short of its expectations for behavior of a LBP in this respect.

6.5 The Board's Decision:

6.5.1 Pursuant to S.335(3) of the Act the Board has resolved to reverse the Registrar's decision not to grant the Appellant with a Carpentry Licence.

6.5.2 Pursuant to Clause 3.11.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.

7. Costs

7.1 Pursuant to S.338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.⁴

7.2 Neither the Appellant nor the Registrar sought costs. The Board having considered the circumstances of this appeal directs that the costs shall lie where they fall.

8. Publication of Name

8.1 Pursuant to S.339 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 made public.

Signed and dated this 10th day of April 2012

Alan Bickers
Chairman
(Presiding Member)

⁴ The "parties" are the Appellant and the Registrar. The Board is not a party.

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

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; or*
 - (b) *suspend or cancel his or her licensing.*

- (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); or*
 - ...

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.*