

BPB Appeal No. A1192

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:	28 January 2014 at [omitted]
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Appeal heard by:	Chris Preston, Presiding Member Brian Nightingale, Board Member Colin Orchiston, Board Member Dianne Johnson, Board Member
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Appearances by:	[The Appellant]
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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 13 August 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 12 September 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 2, 3, and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

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|----------------------|--|
| <i>Competency 2:</i> | <i>Demonstrate knowledge of current building and trade practice.</i> |
| <i>Competency 3:</i> | <i>Carry out planning and scheduling for carpentry work.</i> |
| <i>Competency 4:</i> | <i>Carry out carpentry work.</i> |

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:

- "From 2003 – 2005 [the Appellant] was employed as a Carpenter/Leading hand contracting to [omitted], building new houses and ski chalets in [omitted].
- From November 2005 to March 2006 [the Appellant] was a Self-employed Carpenter, contracting to [omitted], renovating an existing home, spec building in [omitted] including two Ski Chalets.
- Between July 2010 to March 2011 [the Appellant] worked for [omitted] working on a project moving transportable units to another site.
- Between September 2012 to April 2013 [the Appellant] worked as a Supervisor and Carpenter for [omitted] building residential and light commercial, recladding a leaky building.
- During the assessment the assessor requested further information which included [the Appellant's] work history prior to 2003.
- A summary of [the Appellant's] work history dates back to 1981 to 1986 as an Apprentice Carpenter in [omitted], a Carpenter Leading Hand in [omitted], between 1987 to 1990, then 1990 to 1992 Carpenter in [omitted]. Back in [omitted] from 1992 to 1998 working as a Carpenter for [omitted], [omitted] and [omitted]. Self-employed carpenter form 1999 to 2002 in [omitted], [omitted] and [omitted]. [The Appellant's] experience is extensive in Residential Construction over this period.
- [The Appellant's] referees comments present him as a well-respected carpenter, currently working in a specialised field.
- Of the two projects initially provided by [the Appellant] only one was a new home, the other was the relocation of transportable homes.
- The assessor requested two additional projects. Of the two projects provided by [the Appellant], one had a limited scope of the external envelope and is over 5 years old, the other was a deck with no external envelope evidenced and limited structural componentry."
- The four projects [the Appellant] presented to not meet all the scope of work necessary to meet the Carpentry licence competencies.
- The recent work presented by [the Appellant] showed a lack of repeatability over the last 5 years.
- [The Appellant] answered questions from the regulatory environment handbook correctly."

⁷ clause 10 and 11 of the Rules

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 assessors 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."

5.0 Appellant's Submissions

5.1 The Appellant included with his appeal a written submission describing the type of work that he had undertaken in over thirty years in the building industry both in [omitted] and [omitted].

5.2 As a building contractor working in a provincial town for over sixteen years, the Appellant had been responsible for several houses ranging from simple two-bedroom units to highly complex projects.

5.3 Following this, the Appellant worked in a commercial context as a leading hand for the relocation of two-story apartment units from storage to a sloping inner-city site.

5.4 More recently, the Appellant spent approximately eighteen months in the film industry constructing specifically engineered film sets.

5.5 The Appellant made the Board aware of his involvement in projects that were in addition to those made available to the Assessor.

5.6 Through questioning from the Board, the Appellant described his involvement in the projects submitted and explained his understanding of the differences between those projects and current construction technology and Building Code.

5.7 The Appellant submitted that his lack of continuity in residential work did not diminish his familiarity with carpentry, and that he maintained his awareness of current building practice through his continuity of building work.

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.

- 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.
- 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 demonstrated that he met sufficient performance indicators to satisfy the requirements of Competencies 2, 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 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 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

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.”*