

BPB Appeal No. A1007

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
against a
decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1. Introduction

1.1 [redacted] ("the Appellant") of [redacted] applied for Carpentry and Site/Area of Practice 3 Licences 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 [redacted] applications under Rule 12 and [redacted] was notified of the Registrar's decision on 26 January 2011, together with his right to appeal the decision within 20 working days to the Building Practitioners' Board ("the Board").

1.3 On 31 January 2011², [redacted] appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of further information provided, the Board reconsider his applications and approve the issue of a Carpentry Licence and a Site/Area of Practice 2 Licence.

1.4 The Board decided to hear the appeal in Wellington on 9 May 2011 and invited [redacted] to be present to make submissions. The Appeal was considered in accordance with the Board's "Appeals Procedure".

[redacted] was unable to attend and the Board resolved to consider the appeal "on the papers" (refer to 3.10.16 of the Procedure).

1.5 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 on 4 February 2011.

³ Refer S.335(2) of the Act.

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1.6 Prior to the Board's hearing, [redacted] withdrew his appeal in respect of the Site/Area of Practice 2 Licence, so the Board considered his appeal only in respect of the Carpentry Licence.

1.7 Only Board Members were present for the hearing of the appeal:

Alan Bickers	Board Chairman (Presiding)
David Clark	Board Member
Jane Cuming	Board Member
Brian Nightingale	Board Member
David O'Connell	Board Member
Colin Orchiston	Board Member

1.8 The Board received the Registrar's report of 25 February 2011.

2. Background

2.1 On 12 August 2010, [redacted] submitted his application to the Registrar to be licensed as a Carpentry building practitioner, using the "qualified" application form.

2.2 On 16 September 2010, the Department wrote to [redacted] advising him that his application for Carpentry was complete.

2.3 Assessment Systems Limited (ASL) reviewed the application. The assessment was completed by an Assessor on 1 October 2010, and a peer review of the assessment was completed on 20 October 2010.

2.4 In regard to the Carpentry application, the Assessor found that [redacted] did not meet the requirements for:

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

The Assessor recommended that the application be declined.

2.5 After taking into account the recommendation of the Assessor and the requirements of section 286 of the Act, and after making further enquiries (outlined in this report), the Registrar decided to decline the application (under Rule 12).

3. The Registrar's Decision

3.1 In order to become licensed, [redacted] was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under section 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:

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- *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 competences 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)).

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.

3.5 In making the recommendation to decline the application, the reasons below were recorded by the Assessor.

- (a) _____ has been employed as a _____ since 2004 and has not worked as a carpenter for six years. He has failed to meet competencies 3 and 4.
- (b) Referee _____ worked with _____ at the _____ in 2004. He provided supporting comments on the Applicant's workmanship and carpentry skills. He has not seen _____ since 2004.
- (c) Referee _____ advised that he was _____ former employer. He advised that _____ was working as a carpenter/leading hand when he left the company in 2004 to become a _____

3.6 The Registrar did not consider that there was sufficient reason or concern to overrule the Assessor's recommendation to decline the Carpentry application. In summary the Registrar's reasons were:

- _____ not carrying out planning or scheduling for carpentry work, or carrying out carpentry work, and has not done so for six years.

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- In regard to the construction or alteration of Category 1, 2 and 3 buildings, did not provide evidence that he is competent at organising and managing this work, managing personnel or providing technical supervision.

3.7 The Registrar commented on the application of the Licensed Building Practitioner Scheme to persons such as the Appellant working as officials of Building Consent Authorities:

“ 33. *The licensed building practitioner scheme has not been designed to assess the performance of people whose primary roles is that of a building official. Building officials work for Building Consent Authorities (BCAs). BCA Accreditation addresses the performance of the BCA by focusing on both BCA processes and workforce competence. The separation of building practitioner and building official roles is embedded in the Building Act 2004 and its subordinate regulations, and the licensing of individual building officials was not included as part of the development of the LBP scheme.*

34. *A key element of the LBP scheme is its focus on ‘current competence’. The assessment of current competence is evidence-based, and relies on the applicant being able to provide examples of recent work, and referees who can confirm that work. This requirement is likely to be difficult to achieve for building officials who are not currently practicing design and construction roles, and who may not have done so for many years.”*

4. The Appellant’s Case

4.1 written submissions to the Board referred to carpentry work he had carried out within the last year that also required planning and scheduling. He also referred to his qualifications (Advanced National Certificate in Carpentry) and practical experience as a carpenter (11 years) on buildings with a high degree of complexity.

4.2 provided evidence of the carpentry work he had carried out, together with testimonials.

4.3 original application contained significant evidence of his continuing professional development in the regulatory environment covering building and construction, materials and good practice, including on weather tightness.

5. Board’s Consideration

5.1 The Board has noted that the Registrar was satisfied that met two of the competencies for the Carpentry Licence:

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

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2. *Demonstrate knowledge of current building and trade practice.*

The Board considered it unnecessary to review _____ competency in these two matters, having regard for the Registrar's view.

- 5.2 In regard to Carpentry Competence 3 "*Carry out planning and scheduling for carpentry work*", the Board concluded that Indicator 3.1 was met by the scope of _____ current work as an official of a Building Consent Authority. Indicator 3.2 was demonstrated by the example of work submitted with his appeal, albeit it was not a major project. Nevertheless, the testimonials submitted referred to his leadership role in projects which would have required him to "*order and coordinate material supply*".

The Board has, therefore, concluded that _____ demonstrated through his performance of both indicators, that he met the requirements of Competency 3 of the Carpentry Licence Class.

- 5.3 The Assessor and Registrar's reasons for considering that _____ did not meet the requirements of the Competency was that he was not currently practising as a carpenter and had not done so since 2004.

This identifies an important element of principle which was considered by the Board. Rule 4 states that an applicant for a licence must meet the minimum standards of competence for the class of licence set out in Schedule 1. For the Carpentry Licence Class, there are 4 Competencies, all of which must be met.

- 5.4 The Registrar has referred in his report to an "*assessment of current competence*". (Refer paragraph 3.6). The Board agrees that this is the appropriate basis for assessment and notes that this Licence Class is applicable to "*practitioners working as a carpenter*".

The question to be determined is whether it is necessary for an applicant to be currently working at his/her trade to be regarded as a requirement for current competence. The Board's view is clearly that this is not essential, provided that an applicant is currently competent. In other words, if the practitioner were to return to his/her trade could he/she be expected to perform in a competent manner? Hence, in the Board's view, each case must be considered on its merits.

- 5.5 The Board noted that _____ has achieved the requirements to be awarded an Advanced National Certificate in Carpentry in _____. It was noted in his qualification record that "*He has also achieved above average marks in practical work*" and his Record of Learning from the NZ Qualifications Authority outlines, in considerable detail, the practical work he undertook to obtain his qualifications.

⁴ Refer Performance Indicator 3.2 for Carpentry Licence Class/

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5.6 The Board noted the content of a testimonial from a former employer⁵:

" has gained a broad range of carpentry experience from large scale structural work through to domestic style fitout and finishing work. He has proved himself to be a capable, versatile carpenter who has the skills and experience to slot into any type of work being undertaken".

Since 2004, has been involved with various small carpentry project both for himself and others⁶.

5.7 Clearly, at the end of his employment with a building contractor in 2004, met most, if not all, of the performance indicators of Competency 4 "carry out Carpentry Work". The Board does not consider that over the intervening period of 7 years that his competence in this area will have diminished, particularly given his current employment, his continuing professional development and his on-going building work (albeit of smaller scale).

5.8 The Board has, therefore, decided that meets the requirements of Competency 4 of the Carpentry Licence Class and, therefore, all requirements of the Licence Class and should be issued with a Licence.

6. Board's Decision

6.1 Pursuant to S.335(3) of the Act and Clause 3.11.3 of the Board's Appeals Procedure, the Board has resolved to reverse the Registrar's decision not to issue with a Carpentry Licence.

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

6.3 The Board's reasons are that has demonstrated, to the Board's satisfaction, that he meets all of the competency requirements of the Carpentry Licence.

6.4 The Board reserves its decision on costs and/or publication of the Appellant's name.

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.⁷

⁵

(6 April 2004).

⁶ Reference from (1 February 2011) concerning a residential project.

⁷ The "parties" are the Appellant and the Registrar. The Board is not a party.

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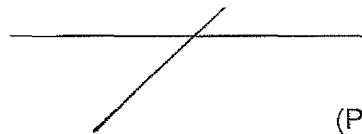
7.2 The Board invites submissions from the Appellant and the Registrar on costs, to be supported by evidence, not later than 15 June 2011.

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 invites submissions from the Appellant on prohibition of publication of the Appellant's name, not later than 15 June 2011.

Signed and dated this 31st day of May 2011


Alan Bickers
Chairman
(Presiding Member)

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

333 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

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(b) within any further time that the appeal authority allows on application made before or after the period expires.