

**BPB Appeal No. A1063**

**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

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**DECISION OF THE BUILDING PRACTITIONERS BOARD**

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Date and location of hearing:	19 November 2012 at [omitted]
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Appeal heard by:	David Clark Jane Cuming Richard Merrifield Brian Nightingale Bill Smith	Presiding Member Board Member Board Member Board Member Board Member
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Appearances by:	The Appellant [Omitted] (Counsel for the Appellant) [Omitted] (witness for the Appellant) [Omitted] (witness for the Appellant) [Omitted] (witness for the Appellant)  The Registrar, Mark Scully, was available by telephone but was not required to participate.
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## 1.0 Introduction

- 1.1 The Appellant of [omitted] applied for a Carpentry Licence under s288(2) of the Act and the Licensed Building Practitioners Rules 2007<sup>1</sup> (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Carpentry application(s) and notified his decision by letter dated 12 June 2012. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 2 July 2012<sup>2</sup>, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 1 November 2012 the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

## 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.<sup>3</sup> 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 1<sup>4</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>5</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>6</sup> however the Board will not review matters outside the scope of the appeal<sup>7</sup>.
- 3.2 The appeal seeks the following relief:  
*“The information to be revised with additional information supplied to get my Carpentry licence”*

In light of s335(4) and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2 and 4 of the Carpentry licence.

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<sup>1</sup> Incorporating amendments for 2008, 2009 and 2010.

<sup>2</sup> Received by Board Secretary on 2 July.

<sup>3</sup> S286 of the Act and rule 4 of the Rules.

<sup>4</sup> Clause 4(2) of the Rules

<sup>5</sup> S330(1)(a) of the Act.

<sup>6</sup> S335(2) of the Act

<sup>7</sup> S335(4) of the Act

## **Carpentry Licence Competencies**

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

*Competency 4: Carry out Carpentry work.*

### **4.0 Registrar's report**

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation<sup>8</sup>. 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 the following from the Assessor's recommendations:

- The Appellant has been in the building industry for 32 years.
- The majority of the Appellant's work has been repairs and maintenance, internal fit-outs, running his own marine business (civil work), and the two projects he has submitted.
- Project 1 submitted by the Appellant showed repeatability of performance but on a limited scope of work.
- Project 2 by the Appellant's description, should have required a building consent. The Appellant did not seem to understand the importance of taking out consent for this type of work.
- The Appellant was asked for another project for Project 2. However, the Appellant stated these were his only projects he has done that would meet a carpentry licence class.
- The two technical referees confirmed the Appellant carried out the carpentry work on the projects submitted and that they would recommend him.
- The Appellant has answered the regulatory questions correctly and he has a fair knowledge of NZS 3604.
- Competencies 2 & 4 have not been met due to the Appellant's limited time working on structures that meet a carpentry licence class. This was backed up by the evidence supplied and my verbal discussion with the Appellant and the two Technical Referees"

4.3 The Registrar based his decision on the assessor's recommendation, for the reasons set out above. He did not consider that there was sufficient reason or concern to overrule the assessor's recommendation.

### **5.0 Appellant's Submissions**

5.1 [Omitted], Counsel for the Appellant, referred to his memorandum of submissions which recognize that in respect of Competency 2 and Competency 4, the Appellant was required to demonstrate practical

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<sup>8</sup> clause 10 and 11 of the Rules

experience and repeatability of that experience. In order to establish this he intended to call as witnesses;

- (a) the Appellant;
- (b) [omitted], a director of [omitted];
- (c) [omitted], an architectural designer (who is also a Licensed Building practitioner); and
- (d) [omitted], the father of the Appellant and a retired [omitted] senior building inspector.

In addition the Board was also referred to a number of written references which were accepted as read by the Board.

5.2 In terms of establishing the practical evidence the Board heard evidence of the Appellants practical experience on the following projects:

- (a) Alterations and additions to 40 units in [omitted] (for [omitted]). This involved the Appellant undertaking general building work and managing the project for [omitted]. This project went from 2008 to 2010;
- (b) A project located in [omitted] in 2011;
- (c) A fitout located in [omitted] in 2011;
- (d) A renovation on a property in [omitted] in 2011;
- (e) Two renovations on historic homes in 2008 and 2010.

Various other projects were referred to which involved a range of different type of building work between the period of 2003 to 2008.

## **6.0 Board's consideration**

6.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for the Carpentry licence:

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

*Competency 3: Carry out planning and scheduling for Carpentry work.*

6.2 The Board then considered Competencies 2 and 4. 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 noted that the Appellant had undertaken building work on a range of different projects between the years 2008 through to 2012. This involved multiple unit developments, commercial projects and single residential renovations. The Board was satisfied that the Appellant provided evidence to demonstrate that he met sufficient performance indicators of Competencies 2 and 4 for the 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 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.**

**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 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 to be made public.

Signed and dated this ..... day of ..... 2012.

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David Clark  
(Presiding Member)

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**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.”*