

BPB Appeal No. A1065

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:	29 October 2012 at [omitted]
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Appeal heard by:	Brian Nightingale Jane Cuming Richard Merrifield William Smith	Presiding Member Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] [omitted] [omitted]	Witness for the Appellant Witness for the Appellant Witness for the Appellant
	The Registrar, Mark Scully, was not present, but was available by telephone.	

1. Introduction

- 1.1 The Appellant of [omitted] applied for a Carpentry Licence under s 288(2) 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 24 May 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 25 June 2012 the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 19 October 2012 the Presiding Member of the Board informed the parties of the procedural matters for the appeal.

2. 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 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 1³.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁴

3. 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 Appellant requested that he would like a “reversal of decision” and “be issued with a LBP Licence for Carpentry”.
- 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 1, 2 and 4 of the Carpentry licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

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

³ Clause 4(2) of the Rules

⁴ S330(1)(a) of the Act.

⁵ S335(2) of the Act

⁶ S335(4) of the Act

Carpentry Licence:

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

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

Competency 4: Carry out Carpentry work.

4. 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 assessor's recommendation.

4.2 In making the recommendation the assessor noted the following:

- The Appellant is a qualified Carpenter with 35 years experience.
- For the last 10 years the Appellant has been contracting to a loyal group of clients undertaking maintenance works and un-consented general carpentry works, for example decks, fences, a variety of landscape type works, and other minor works.
- The Appellant does not carry out consented work and his last major project was over 10 years ago for a large building company. The Appellant had helped one of his referees on other projects that required building consents, but that was over 6 years ago and the referee had not worked with the Appellant within 5 years.
- Both referees were positive about the Appellant's skill level as a carpenter and/or joiner, but neither could comment on his current trade knowledge as they had not worked with the Appellant on projects that required consent within the last 5 years. Both referees considered that the Appellant is a person who is stuck in his ways and was not prepared to change. Neither supported the Appellant being licensed.
- Although the Appellant answered 4 out of 5 regulatory knowledge questions correctly, he did not understand or know a lot about the weathertight issues around the external envelope, or in fact agree with them. The Assessor considered that the Appellant did not have a good understanding of the regulatory environment, did not understand the LBP Scheme or support it, and did not understand the need for building consent.

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

4.3 The Registrar reviewed the assessor's report and the Appellant's application.

4.4 The Registrar based his decision on the assessor's recommendation, for the reasons set out above. The Registrar 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. Appellant's Submissions

- 5.1 The Appellant tabled further evidence including photos and spoke to this.
- 5.2 The Appellant submitted that he is a craftsman capable of, and in most instances carries out, the full range of skills / trade work required for residential construction apart from electrical, plumbing drainage and gas fitting work. This often included the manufacture of window frames and sashes and other specialist joinery included in residential buildings.
- 5.3 The Appellant submitted that he was an "old fashioned and conservative carpenter" and would not carry out work that he was not comfortable with or confident in doing properly. He submitted that in many instances he would over spec various areas of work that have traditionally proved troublesome to others.
- 5.4 The Appellant submitted that he relied on his wife and more recently his son to research any technical and regulatory information required.
- 5.5 The Appellant advised that most of the work that he carried out was either of a minor nature, maintenance, or remedial work that generally did not require a Building Consent. Because he was now training an apprentice the Appellant was keen to obtain his licence in order to increase his range and scope of work to provide a greater range of training for his apprentice.
- 5.6 The witness for the Appellant submitted that the Appellant is:
- "A darn good tradesman".
 - Not a "book, computer or figure person".
 - Relies on his wife and son as back up for this.
 - Is interested in learning and improving.
 - Wants to train his apprentice.

6. 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 3: Carry out planning and scheduling for Carpentry work.

- 6.2 The Board then considered:

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

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

Competency 4: Carry out Carpentry work.

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 his competency.

- 6.4 A key element of the LBP scheme is its focus on 'current competence'. The assessment of current competence is evidence based, and whilst not restricted to the past 5 years, relies on the applicant being able to provide examples of a range of work in the licence class applied for, and demonstrate knowledge of recent changes in technical requirements.
- 6.5 The Board considered that the Appellant:
- Was an honest and hardworking man with strong craft skills.
 - Had strong support from both his wife and his son and that they worked commendably well as a team.
 - Described his trade practices as predominantly relying upon his 35 years experience, as a sole practitioner.
 - Failed to demonstrate sufficient current knowledge of the regulatory environment of the building industry.
 - Failed to demonstrate that he had sought and maintained knowledge of current building and trade practice or methods.

7 Board's findings

- 7.1 In the Boards view, the Appellant has failed to demonstrate that he has met a sufficient number of performance indicators in Competencies 1, 2, and 4.
- 7.2 The Board, therefore, concluded that the Appellant did not meet the competency requirements for a Carpentry licence.

8. Board's Decision

- 8.1 Pursuant to s335(3) of the Act, the Board has resolved to uphold the Registrar's decision not to license the Appellant with a Carpentry Licence. The appeal is therefore declined.**

9. Publication of Name

- 9.1 Pursuant to s339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 9.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 9.3 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 7th day of November 2012

Brian Nightingale
(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.”*