

BPB Appeal No. A1083

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:	26 November 2012 at [omitted]
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Appeal heard by:	David Clark Deputy Chairman (Presiding) Dianne Johnson Board Member Brian Nightingale Board Member
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Appearances by:	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 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 25 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 26 July 2012², 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.³ 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 1⁴.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.⁵

3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing⁶ however the Board will not review matters outside the scope of the appeal⁷.
- 3.2 The appeal seeks the following relief:
“To be licensed in 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 2, 3 and 4 for a Carpentry licence.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 26 July 2012.

³ S286 of the Act and rule 4 of the Rules.

⁴ Clause 4(2) of the Rules

⁵ S330(1)(a) of the Act.

⁶ S335(2) of the Act

⁷ S335(4) of the Act

Carpentry Licence

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.

4.0 Registrar's report

4.1 The Registrar's decision to grant or decline a licence is informed by an assessor's recommendation⁸. 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, at paragraph 21, the following from the Assessor's recommendations:

..."

- i. The Appellant was a Building Surveyor in Australia for 27 years. He worked for 6 years as a builder in New Zealand from 1999 – 2004. The Appellant answered all of the regulatory questions correctly and he has a good knowledge of NZS3604.
- ii. In the last six years the Appellant has owned and been running a [omitted] and during this time he has only constructed two building projects.
- iii. Both projects submitted by the Appellant had insufficient scope of work to cover all of the competencies.
- iv. The Appellant's referees had good comments about the Appellant, but could only confirm him working on two projects in the last seven years. The referee [omitted] was not able to recommend the Appellant as he had not seen enough of the Appellant's work and had only worked on one project in the last ten years with the Appellant.
- v. The assessor requested an additional project due to the fact that Project one was seven years old, however the Appellant only had one other project to submit in the last seven years.
- vi. The new project had a limited scope of work and based on the Appellant's project description, this project should have had a building consent.
- vii. The Appellant has not been able to prove repeatability of performance and being currently competent. For this very reason competencies 2, 3, & 4 for Carpentry have not been met."

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

4.3 The Registrar considered:

"22. I reviewed the assessors report and the Appellant's application.

23. 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"

⁸ clause 10 and 11 of the Rules

5.0 Appellant's Submissions

- 5.1 The Appellant submitted that the Assessor had not fully considered his application, as submitted, and had therefore erred in several of his observations and conclusions.
- 5.2 The Appellant submitted that:
- i. He has worked in the building industry since 1972.
 - ii. He trained initially as a Building Surveyor and worked as the same for 14 years.
 - iii. He then worked as a Building Designer for 2 years before setting himself up in business to design and/or build both residential and commercial buildings up to a value of \$1,000,000.
 - iv. In 1992 he earned his [omitted] from the [omitted] Licensing body.
 - v. In 1999 he moved to New Zealand and was self employed, carrying out general building work until 2005.
 - vi. Since 2005 he owned and operated a [omitted] but continued to carry out miscellaneous building work.
- 5.3 The Appellant submitted a list of projects carried out between 1999 and 2005 and described to the Board the scope of work completed on these projects.
- 5.4 The Appellant described in more detail the building work he had carried out since 2005. In particular he advised on how he had prepared the building consent documentation for the residential alterations to the [omitted] and how he worked closely with the Building Consent Authority to determine or confirm the requirements for various works.

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.*
- 6.2 The Board then considered Competencies 2, 3 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 notes that the Appellant has been running a [omitted] business for the past 6 years and considers that neither this nor his inability to show repeatability of performance automatically rules him no longer competent in any of the competencies. It is, however, up to the Appellant to demonstrate current competency.

- 6.5 The Board noted that the Appellant has continued to carry out building work which meets some of the performance indicators required for the competencies.
- 6.6 The Board considered that the Appellant demonstrated a sound knowledge of all round carpentry skills, an awareness of his limits of competence, a willingness to seek advice where necessary and how all this fitted in with his planned future building activities.

Board's findings

- 6.7 The Board finds that the Appellant demonstrated that prior to 2005 he would have been considered to have met sufficient of the performance indicators to demonstrate competence in Competencies 2, 3 and 4 for a Carpentry Licence and that he provided sufficient evidence to demonstrate that he has maintained this competence.

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 12th day of December 2012.

David Clark
Deputy Chairman
(Presiding)

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.”*