

**BPB Appeal No. A1127**

**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:	28 May 2013 at [omitted]
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Appeal heard by:	Dianne Johnson Colin Orchiston Jane Cuming	Presiding Member Board Member 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 s287 of the Building Act 2004 (“the Act”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Appellant’s application and notified his decision by letter dated 24 October 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 22 November 2012 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.<sup>1</sup> 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 1<sup>2</sup>.
- 2.2 Where the Registrar declines an application the applicant has a right of appeal to the Board.<sup>3</sup>

## 3.0 Scope of the appeal

- 3.1 An appeal proceeds by way of rehearing<sup>4</sup> however the Board will not review matters outside the scope of the appeal<sup>5</sup>.
- 3.2 The appeal seeks the following relief:  
  
The grant of a Carpentry Licence.
- 3.3 In light of s335 and the Registrar’s decision letter, the Board interprets its inquiry as being restricted to consideration of Competencies 2, 3 and 4 for the grant of a Carpentry licence.

### **Carpentry Licence Competencies:**

- |                      |  |
|----------------------|--|
| <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>                                     |

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<sup>1</sup> S286 of the Act and rule 4 of the Rules.

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

<sup>3</sup> S330(1)(a) of the Act.

<sup>4</sup> S335(2) of the Act

<sup>5</sup> S335(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 recommendation<sup>6</sup>. 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 23, the following from the Assessor's recommendations:

“...  
”

- *From 1971 to 1982 [the Appellant] was an apprentice joiner.*
- *From 1982 to 1988 [the Appellant] carried out work on farm sheds, renovations and refurbishments as a Carpenter and Joiner.*
- *1988 to 1998 [the Appellant] was a bus builder. From 1998 to 2002 [the Appellant] carried out work on motor homes as an Engineer.*
- *2002 to present [the Appellant] is a self employed Carpenter carrying out work on small farm buildings, garages, renovations and refurbishments.*
- *[The Appellant's] project records questionnaire was completed with appropriate details pertaining to the projects he submitted.*
- *The scope of works [the Appellant] carries out is limited and he is now focused on continuing to perform smaller works within the residential envelope.*
- *Project two [the Appellant] provided was a garage construction.*
- *The assessor requested an additional referee for project two as the referee provided could not comment on [the Appellant] carrying out the work the project. An additional referee was supplied; however the referee was unable to comment on the project.*
- *The assessor requested an additional project; however the projects [the Appellant] provided are his largest work in the last five years.*
- *[The Appellant] outlined that over the last five years his works are of a smaller nature involving working within the existing building footprint. The larger jobs that [the Appellant] carries out would involve kitchen and bathroom refurbishments and would not require a building permit.*
- *Both referees were supportive of [the Appellant's] application.*
- *[The Appellant's] role at present does not meet the minimum standard for the licence criteria.*

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<sup>6</sup> clause 10 and 11 of the Rules

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

4.3 The Registrar concluded:

*"24. I reviewed the assessors report and [the Appellant's] application.*

*25. I based my decision on the assessor's recommendation, for the reasons set out above. However, I did not agree with the assessor that [the Appellant] met Competency 2: Demonstrate knowledge of current building and trade practice."*

## **5.0 Appellant's Submissions**

5.1 The Appellant provided additional technical references prior to the hearing.

5.2 The Appellant spoke about and expanded on his involvement at Project 1, the [omitted], and Project 2, the [omitted] new garage and internal house structural alteration.

5.3 The Appellant introduced new information about a [omitted] pole platform residence that he constructed in 2004, and a [omitted] that he worked on in 2008.

5.4 The Appellant has more recently been doing residential alteration work including changes to structural framing, non-structural kitchen and bathroom installation.

## **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 Competency:**

*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.

### *Board's findings*

6.4 In answering questions from the Board the Appellant explained that he had completed a joinery apprenticeship and subsequently worked as a joiner building stairs, windows, kitchens and doors. He later transitioned across to installation of joinery on site, and building work.

6.5 The Board was satisfied that the Appellant understood the extent of his competency and sought technical information as necessary.

6.6 The Board considered that the Appellant provided sufficient evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for the grant of 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 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 29 day of May 2013

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Dianne Johnson  
(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.”*