

BPB Appeal No. A1128

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:	23 April 2013 at [omitted]
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Appeal heard by:	Alan Bickers Bill Smith Richard Merrifield Brian Nightingale	Chairman Board Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (witness 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 2007¹ (“the Rules”).
- 1.2 The Registrar of Licensed Building Practitioners (“the Registrar”) declined the Carpentry Licence application and notified the Appellant of his decision by letter dated 7 November 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 November 2012, the Appellant lodged an appeal to the Board against the Registrar’s decision.
- 1.4 At a pre-hearing teleconference on 15 April 2013 the Chairman of the Board informed the Appellant 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.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

3.0 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 grant of a Carpentry Licence.
- 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 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 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 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 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

" ...

- *In 1968 [the Appellant] started as an unofficial apprentice with his Grandfather and then he spent until 1978 working with his father and two brothers building new houses, alterations, and additions.*
- *From 1979 to 1984 [the Appellant] was in a partnership with his two brothers building alterations, additions, preparing plans for the council and undertaking restoration work.*
- *From 1985 to 1991 [the Appellant] was a self-employed building contractor employing four other carpenters in the [omitted]. His work involved undertaking restoration, alterations and additions.*
- *From 1992 to 1999 [the Appellant] was a self-employed builder in the Auckland region, building alterations and additions and carrying out design work for council consents. He also did the carpentry work for new builds, renovations and refurbishments of [omitted], which were owned by [the Appellant], in [omitted].*
- *From 2000 to 2005 [the Appellant] was a main contract builder, designer, draughtsman and cabinetmaker, carrying out carpentry work on [omitted] restoration projects owned by [the Appellant].*
- *From 2006 to present [the Appellant] has completed a [omitted], which was his own home. He now has a business that builds and supplies small un-consented units as separate completed accommodation for home owners.*
- *Both projects that were supplied are outside the recommended five year time frame.*
- *The assessor requested two new projects that were within the recommended timeframe. [The Appellant] was unable to do so and*

⁷ clause 10 and 11 of the Rules

requested the assessor to continue with the assessment with the information supplied.

- *Both of [the Appellant's] referees were supportive of his application however, neither of them could confirm his recent work experience.*
- *[The Appellant's] knowledge of current building practices is up to date, however he does not agree with the current trade practices particularly around the weathertightness of buildings including the cavity systems and installation of windows.*
- *[The Appellant] prefers to complete a project first and then apply for approval through the council afterwards.*
- *[The Appellant] answered all the questions relating to the regulatory environment correctly, however he did not agree with the new building materials, current trade practices and council involvement."*

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

4.3 The Registrar concluded:

"25. I reviewed the assessor's assessment report and [the Appellant's] application.

26. I based my decision on the assessor's recommendations, for the reasons set out above. I did not consider that there was sufficient reason or concern to overrule the assessor's recommendations."

5.0 Appellant's Submissions

5.1 The Appellant referred the Board to his letter of 3 April 2013 which provided additional information on his work experience and current activity. The Appellant tabled, by way of exhibits, several display boards containing photographs and plans of a range of projects he had undertaken dating back to 1986.

5.2 The Appellant called as a witness [omitted] who tabled letters of support from [omitted] (former client), [omitted] ([omitted] and former/current client), [omitted] (omitted) and former client), [omitted] (former client). [Omitted] also tabled code compliance certificates from [omitted] for two properties and a certificate of acceptance for work on one of those properties.

5.3 [Omitted] gave evidence on work carried out in 1986 on the construction of his house in [omitted] by the Appellant, including the details of construction. The Appellant was questioned by the Board concerning changes in building code compliance requirements, construction methodology, health and safety, and environmental mitigation methods from the carrying out of this project to the present day.

5.4 [Omitted] gave evidence concerning a project constructed by the Appellant in 2002 at his property in [omitted]. The architecturally designed two storey studio building involved significant use of natural timbers and was designed

and constructed to be compatible with the heritage character of the area. The scope of work also involved significant structural engineering elements including a 4 metre high retaining wall supporting the road and foot path and foundations comprising 300mm diameter reinforced concrete piles 3 metres deep. [Omitted] and the Appellant described, with the aid of the photos, the methodology in carrying out this project and the range of difficulties encountered because of site conditions. The construction was completed to a high standard of workmanship.

- 5.5 [Omitted] gave evidence with the aid of his display boards on a number of other buildings which included, major renovations of heritage villas and new houses from 1987 until 2013. The Board noted that many aspects of these projects would be classified as restricted building work and would require building consent. Code compliance certificates from [omitted], dated 2005 and 2008, were tabled to support works at 2 locations as well as a certificate of acceptance. Aspects of the Appellant's work involved structural remediation work, recladding, linings, and reinstatement of finishings to original heritage type details of [omitted].
- 5.6 [Omitted] who had worked with the Appellant in 2005–06 and subsequently worked in commercial construction, gave evidence to confirm the Appellant's health and safety practices, his understanding of NZS3604, carpentry skills and trade practices. He confirmed the Appellant's skills in planning and scheduling work, use of specifications, all be it relatively basic, and research into building materials and installation methods. [Omitted] confirmed the scope of a building extension work carried out at [omitted]. This included an extension to the existing house, extensive decks and a pavilion.
- 5.7 [Omitted] advised the Board that in relation to a current project planned for [omitted] that he had required the use of professional engineers to carry out geotechnical investigations, foundation design, structural design, and stormwater disposal by overland flow path to meet the local authority's requirements.
- 5.8 [Omitted] gave evidence to support the Appellant's level of research and reading of technical publications regarding building practices, materials and technologies. The Appellant referred by way of example, to recent research into the appropriate use of a lightweight aerated concrete product.
- 5.9 The Board questioned the Appellant at length and in detail in relation to competencies 2, 3 and 4 for a Carpentry licence and, in particular, the current requirements of the NZ building code and acceptable means of compliance.
- 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 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

- 6.5 The Board considered that the Appellant provided adequate verified evidence to demonstrate that he met sufficient performance indicators to be considered to meet the requirements of Competencies 2, 3 and 4 for a Carpentry Licence.
- 6.6 While many of the examples of large scale building work cited by the Appellant were older than 5 years the Board considered that the Appellant had provided sufficient recent examples, albeit of smaller scale, to demonstrate current competency.

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 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 26th day of April 2013.

Alan Bickers
(Chairman)

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.”*