

BPB Appeal No. A1148

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:	20 May 2013 at [omitted]
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Appeal heard by:	David Clark Bill Smith Brian Nightingale Jane Cuming	Deputy Chair (Presiding) Board 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 Carpentry Licence under s287 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 3 December 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 28 January 2013 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.² 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 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.

Carpentry Licence Competencies:

- 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.*

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

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 assessors' recommendation.

4.2 The Registrar's report notes, at paragraph 20, the following from the Assessor's recommendations:

“...

- *From 1975 to 2004 [the Appellant] was employed as an [omitted] for [omitted].*
- *[The Appellant] confirmed he has worked on three building projects over the past ten years. Two houses were for him and another project was for a friend in 2008.*
- *[The Appellant] provided no evidence that he has worked for any builder or building company to gain building skills and experience in the trade.*
- *Referee one, [the Appellant] provided had only worked for eight days on Project 1. The referee confirmed that he has not worked on any other building projects with [the Appellant].*
- *Referee two was employed by the applicant to carry out the Carpentry work and complete the building for Project 2. [The Appellant] was not on site on a regular basis and would arrive to check on progress and help out if needed.*
- *Referee two also confirmed [the Appellant] would work on the project in the weekends when he was not involved with his aeroplane.*
- *Both of [the Appellant's] referees were supportive of his knowledge on the building site; however they were unable to provide evidence of [the Appellant's] repeatability and building performance of Carpentry work.*
- *[The Appellant] was unable to provide any further building projects.*
- *[The Appellant] has provided insufficient evidence to demonstrate the minimum level of Carpentry standards required.”*

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

4.3 The Registrar concluded:

“21. I reviewed the assessors report and [the Appellant's] application.

22. I based my decision on the assessor's recommendation, for the reasons set out above.

⁷ clause 10 and 11 of the Rules

23. *I did not agree with the assessor's recommendation that [the Appellant] demonstrated the following competencies:*
- *Competency 2: Demonstrate knowledge of current building and trade practice.*
 - *Competency 3: Carry out planning and scheduling for Carpentry work.*
24. *[The Appellant] only submitted one recent project and was unable to produce any more evidence regarding repeatability of work.*
25. *[The Appellant] has no formal training or qualification."*

5.0 Appellant's Submissions

- 5.1 The Appellant provided the Board with a written submission which was attached to his Appeal form. In addition the Board received the following material;
- An alternative project
 - Additional referees/clients
- 5.2 The Appellant also made further oral submissions which can be summarised as follows;
- He expressed concern that he did not believe the Registrar had taken into account and given sufficient consideration to project 2 which was the relocation and extension of the house at [omitted];
 - That if the abovementioned project as well as the other projects he submitted are taken into account he was able to demonstrate "repeatability of work" which was one of the reasons why the Registrar declined his Carpentry Licence;
 - That providing a further technical referee ([omitted]) a [omitted] with the [omitted] who inspected the work for project 1 (the Appellant's own home) he was able to demonstrate that his application could be supported by a relevant technical referee.

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:

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.

- 6.4 The Board accepts that the Appellant has had considerable experience as an aircraft tradesperson dealing no doubt with some highly technical issues. Whilst acknowledging that many of these skills are transferable to the building industry, the Appellant has failed to demonstrate that he has sufficient experience within the building industry to meet the threshold criteria of the competencies for him to be granted his Carpentry Licence.

Board's findings

- 6.5 Accordingly the Board considered that the Appellant provided insufficient 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.

7.0 Board's Decision

- 7.1 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.**

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 2 day of July 2013

David Clark
Deputy Chair
(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.”*