

BPB Appeal No. A1149

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:	1 July 2013 at [omitted] Heard on the papers at Appellant's request	
Appeal heard by:	Brian Nightingale Colin Orchiston Richard Merrifield	Presiding Member Board Member Board Member

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 18 January 2013. Notification of the decision included a notice of the right to appeal the decision to the Building Practitioners Board (“the Board”).
- 1.3 On 29 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

3.4 At the Appellant's request the Board heard the appeal on the papers.

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 21, the following from the Assessor's recommendations:

"...

- *[The Appellant] has a good work history and supportive referees.*
- *Only one of [the Appellant's] referees was able to talk about the work he has completed within the last five years, which was somewhat limited.*
- *There is insufficient evidence to show [the Appellant] has carried out a good scope of Carpentry work in a recent and consistent context.*
- *There is insufficient evidence to show [the Appellant] has carried out a good scope of planning or scheduling work in a recent and consistent context."*

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

4.3 The Registrar concluded:

22. I have been delegated under S312 (1) to review the assessment report and make a decision about [the Appellant's] application.

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

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

25. There is insufficient recent evidence to demonstrate repeatability of performance and therefore I did not agree with the assessor's recommendation that [the Appellant] demonstrated Competency 2: Demonstrate knowledge of current building and trade practice."

5.0 Appellant's Submissions

5.1 The Appellant's submission provided a list of projects that he had worked on, but neither detailed what his actual involvement was, nor how they related to the performance indicators for Competencies 2, 3 and 4 of the Carpentry Licence.

⁷ clause 10 and 11 of the Rules

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.
- 6.4 Because the Appellant did not attend the hearing the Board did not have the opportunity to question him on his experience.
- 6.5 The Board considered that the Appellant failed to provide 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.

Board's findings

- 6.6 The Board, therefore, concluded that the Appellant did not meet the competency requirements 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, 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 3 day of **July 2013**.

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.”*