

BPB Appeal No. A1167

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:	9 July 2013 at [omitted]
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Appeal heard by:	Brian Nightingale Colin Orchiston Richard Merrifield	Presiding Member Board Member Board Member
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Appearances by:	The Appellant [omitted] (Support for 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 18 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 25 February 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 and 4 for a Carpentry Licence.

Carpentry Licence Competencies:

- Competency 2: Demonstrate knowledge of current building and trade practice.*
- 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 21, the following from the Assessor's recommendations:

"...

- *[The Appellant] is an elderly builder who has served his apprenticeship and worked within the industry all his life.*
- *[The Appellant] is now 77 years old and many of his peers (other builders) who have worked alongside him have passed away.*
- *It appears during the last five years or so [the Appellant] has been working alone as a builder and his last project has been his own home.*
- *[The Appellant] was unable to demonstrate repeatability of performance and current competence within the last five years.*
- *The first referee [the Appellant] provided attested to him carrying out a large number of residential construction projects over the last five years.*
- *[The Appellant] was unable to provide a second technical referee who could confirm his evidence."*

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

4.3 The Registrar concluded:

"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.

24. [The Appellant] has enjoyed a long building career. However, there have been significant industry changes over the last decade, and [the Appellant's] evidence does not provide insight into his current competence."

5.0 Appellant's Submissions

5.1 The Appellant tabled photos of recent residential projects and confirmed the work he had personally carried out. This included carpentry work, light weight metal roofing and timber joinery.

5.2 The Appellant spoke of his considerable experience in the building industry since gaining his apprenticeship in the 1950s. He had operated a building

⁷ clause 10 and 11 of the Rules

business employing between 15 and 30 staff, and had a joinery business employing up to 14 staff. The projects he carried out included residential, schools, light commercial, motels and hotels.

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 Competencies:

Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.

Competency 3: Carry out planning and scheduling for carpentry work.

6.2 The Board then considered Competencies 2 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 questioned the Appellant in detail on the performance indicators in Competencies 2 and 4 and was satisfied that he demonstrated both in depth knowledge and experience.

6.5 The Board noted that the projects submitted involved large and complex houses and that the Appellant had carried out a wide variety of carpentry and allied trade work on them.

Board's findings

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 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 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 11 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.”*